Dec 21. argued (22 [illegible])

Dec 24. aff'd. Clifford

13

SUPREME COURT OF THE UNITED STATES.

No. ~~356.~~ ~~243.~~ ~~91~~ 14

THE CITY OF AURORA, PLAINTIFF IN ERROR,

vs.

CHARLES W. WEST AND JOSEPH TORRENCE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED JANUARY 2, 1866.

GOVEERNMENT PRINTING OFFICE.

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1 Pleas held in the circuit court of the United States in and for the eighth judicial circuit and district of Indiana, at the court-house, in the city of Indianapolis, before the honorable David Davis, one of the associate justices of the Supreme Court of the United States, on the day of , in the year of our Lord one thousand eight hundred and sixty-five.

CHARLES W. WEST and JOSEPH TORRENCE
v.
THE CITY OF AURORA. } No. 531.—Assumpsit.

Be it remembered, that heretofore, to wit, on the seventh day of March, in the year of our Lord one thousand eight hundred and sixty-four, the plaintiffs sued out of the office of the clerk of this court their writ in the above-entitled cause; which said writ is in the words and figures following, to wit:

The President of the United States of America to the marshal
2 of the district of Indiana, greeting:

You are hereby commanded to summon the city of Aurora, if she may be found in your district, to be and appear before the circuit court of the United States for the district of Indiana, to be holden before the judge thereof, at Indianapolis, in said district, on the 1st Tues. in May next, to answer unto Charles W. West and Joseph Torrence, citizens of the State of Ohio, in a plea of assumpsit. Debt . Damages twelve thousand dollars, ($12,000.) And have you then and there this writ.

Witness honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the district of Indiana, hereunto affixed, at Indianapolis, this 7th day March, in the year of our Lord one thousand eight hundred and sixty-four.

[L. S.] JOHN H. REA, *Clerk.*

And said writ was forthwith delivered to the marshal of said district, who afterwards, to wit, on the fifth day of April, in the year aforesaid, made and filed in the same clerk's office his return thereto, that he had, on the 31st day of March, 1864, served said writ by reading the same to and leaving a copy with George Sutton, mayor of said city of Aurora.

3 And be it further remembered, that on the seventh day of March, in the year aforesaid, said plaintiffs, by their attorneys, filed in the same clerk's office their declaration in the above-entitled cause; which declaration is in the words and figures following, to wit:

In the United States circuit court, Indiana district, May term, 1864.

DISTRICT OF INDIANA, *ss:*

Charles W. West and Joseph Torrence, citizens of the State of Ohio, complain of the city of Aurora, a corporation created and existing in the State of Indiana by virtue of the laws thereof, of a plea of trespass on the case on promises: for that the said defendant, by virtue of an act of the general assembly of the State of Indiana, enti-

tled "An act granting the citizens of the town of Aurora, in the county of Dearborn, a city charter," approved Feb. 14, 1848, did, on the first day of January, 1852, in said district, execute and issue, in due form, under the seal of said corporation and the signature of the mayor and clerk thereof, fifty bonds of that date, each payable to the Ohio and Mississippi Railroad Company, or bearer, at the North River Bank, in the city of New York, twenty-five years after date, in the sum of $1,000 00 each, on presentation and delivery thereof at said bank, with six per cent. interest thereon, payable annu-
4 ally on the first day of Jan., at said bank, on presentation and delivery of the proper coupons to each of said bonds attached; which bonds were and are, respectively, numbered from one to fifty, inclusive, and to each of which, when so executed and delivered, were attached 25 interest coupons, under the signature of the clerk of said city, Will. W. Conway; and the plaintiffs say that by each of fifty of said coupons, attached to said fifty bonds, respectively, the defendant promised to pay the bearer at said bank, on the first day of Jan., 1862, sixty dollars, making together $3,000; and by each of fifty other of said coupons attached to said fifty bonds, respectively, the defendant promised to pay the bearer at said bank, the further sum of sixty dollars on the first day of Jan., 1863, making together the further sum of $3,000; and by each of fifty other of said coupons to said fifty bonds respectively attached, the defendant promised to pay the bearer at said bank the further sum of sixty dollars on the first day of January, 1864, making together the further sum of $3,000, and being in all the sum of $9,000; and which 150 coupons are all of the following tenor and effect, (with the exception that each is numbered differently, bearing the same number of the bond
5 to which it belongs, and that 50 of them are payable Jan. 1, 1862; 50 payable Jan. 1, 1863; and 50 payable Jan. 1, 1864,) to wit:

"Ohio and Mississippi R. road; subscription, $50,000.

"The city of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1862, being annual interest on bond No. 1.

"$60. WILL. W. CONWAY, *Clerk.*"

And the plaintiffs say that heretofore, to wit, on the first day of Jan., 1862, for valuable consideration and in good faith, they became the owners and bearers of all said bonds and of all the coupons thereto attached as aforesaid, and have ever since been, and now are, such owners and bearers, and that the defendant has never paid said 150 coupons, nor said $9,000 so due thereon, nor any part thereof.

2. And the plaintiffs, further complaining, say that at said district, on the first day of Jan., 1864, the defendant, being indebted to the plaintiffs in the further sum of $9,000 for goods, wares, and merchandise before that time by the plaintiff sold and delivered to the defendants at her request, and in the further sum of $9,000 for so much money before that time by the defendant had and received to

the use of the plaintiff, and in the further sum of $9,000 lent and advanced by the plaintiffs to the defendant at her request, then
6 and there undertook and promised the plaintiffs, in consideration thereof, to pay them the same sums on demand.

Yet. though often requested, the defendant has never paid to the plaintiffs the several sums in the first and second counts of this declaration mentioned, or either of them, or any part thereof, to the damage of the plaintiffs twelve thousand dollars. And therefore they sue, &c.

McDONALD & PORTER, *Pl'ff's' Att'ys.*

And be it further remembered, that afterwards, in the court aforesaid and before the judge aforesaid, at the May term thereof for the year one thousand eight hundred and sixty-four, to wit, on the 4th day of May, the following proceedings were had in said cause, to wit:

Come now the plaintiffs, by their said attorneys, and the defendant, by Messrs. Lincoln & Sullivan, her attorneys, comes also and files her special demurrer herein in these words, to wit:

In the circuit court of the United States for the district of Indiana, May term, 1864.

CHARLES W. WEST and JOSEPH TORRENCE, partners under the name and style of West & Torrence, *v.* THE CITY OF AURORA.	Assumpsit.

The defendant, by her counsel, J. Sullivan & T. D. Lincoln, comes and defends the wrong and injury, when, &c., and as to the
7 first count in the said declaration says that said plaintiffs ought not to have or maintain their said action against the defendants, because, she says, that said count, and the matters and things therein contained as therein set forth, are not sufficient in law to maintain the action aforesaid, and that she is not bound by law to answer the same. And this she is ready to verify. Wherefore she prays judgment, &c.

And for causes of demurrer to s'd first count the defendant shows and states the following, viz:

1st. That said count does not show or set forth that the said bonds were issued in pursuance of any vote taken or given by the qualified voters of the city of Aurora, or any other authority, by which the city of Aurora, or her common council or officers, or any of them, were legally authorized to issue said bonds and coupons or to sell or dispose of the same, nor does it set forth that *that* the common council of said city, or any officer or person having power to act for the city in the premises, has found or determined that any such vote was given by the qualified voters of said city, or any authority raised by such vote to issue such bonds and coupons.

2. That the plaintiffs in said count have set forth more than one

cause of action, wherefore the count is double: in this, that each coupon is a distinct cause of action; nor does it appear in and by
8 said count that the said bonds and coupons were issued for any municipal purpose whatever.

3d. That in said count no demand of payment of said coupons, or either of them, at the North River Bank, in the city of New York, is alleged or set out.

4th. That said count is otherwise informal and insufficient to maintain said action.

5. That it is nowhere alleged in said count that the Ohio and Mississippi R. R. Co. was or is a company chartered to make a road to the city of Aurora, or that said O. & M. R. R. is a road running to or from said city.

And said defendant, by her said counsel, as to the second count of said declaration, comes and defends the wrong and injury, when, &c., and says that the plaintiffs ought not to have or maintain their action aforesaid as set out in said count, because, she says, that said count and the matters and things therein stated are not sufficient in law for the plaintiffs to have or maintain their action on said count against said defendant, nor is defendant bound to answer the same. And this she is ready to verify. Wherefore she prays judgment, &c., and for causes of demurrer sets down the following, viz:

1. That no vote of the qualified voters of the city or other authority is shown by said count to have been given to the common council of said city, or to any officer thereof, or any other person to
9 purchase or become indebted for goods, wares, and merchandise sold and delivered to her, nor to borrow money or become indebted therefor, or by virtue of which the said city had and received money or became indebted therefor to the plaintiffs.

2. That the plaintiffs in said 2d count of said declaration has set forth more than one cause of action, wherefore said count is double.

3. Nor does it appear anywhere in or by said count that the said debts as alleged to have been contracted were so contracted for any municipal purpose whatever.

4. Said count is otherwise informal, insufficient, and defective.

J. SULLIVAN.
T. D. LINCOLN, *P. Q.*

And day is given.

And afterwards, in the court aforesaid, at the term last aforesaid, and before the judge aforesaid, to wit, on the fifth day of May, in the year aforesaid, the following proceedings were had in said cause, to wit:

Come the parties, by their attorneys, and after arguments heard upon demurrer the court takes the same under advisement, and day is given the parties.

And afterwards, in the court aforesaid, at the term last afore-
10 said, and before the judge aforesaid, to wit, on the eleventh day of May, in the year last aforesaid, the following proceedings were had in said cause, to wit:

Now again come the parties, by their attorneys, and the court being advised of the premises, overrule the demurrers to the declaration. And thereupon, on the defendant's motion, the said demurrers are withdrawn, and the defendant is ruled to plead to the declaration within 60 days herefrom, and this cause is continued at the defendant's costs.

And afterwards, to wit, on the fifth day of July, in the year of our Lord one thousand eight hundred and sixty-four, the said defendant, by her attorneys, filed in the same clerk's office her plea to the declaration in the said cause; which said plea is in the words and figures following, to wit:

United States of America, circuit court of the United States for the district of Indiana, May term, 1864.

THE CITY OF AURORA
ads.
CHARLES W. WEST and JOSEPH TORRENCE, partners, &c.

(1st plea withdrawn from record.)

11 2. And for a further plea in this behalf as to the first count of the plaintiffs' declaration the said defendant, by her attorneys aforesaid, says (actio non) because, she says, that the said coupons in said first count mentioned and said bonds to which said coupons were attached were made and issued by the city council of the city of Aurora and they passed into the possession of the Ohio and Mississippi Railroad Company without any good or valuable consideration, of which the said plaintiffs, at the time they became the holders of said bonds and coupons in said first count mentioned, had notice. And this the defendant is ready to verify. Wherefore, he prays judgment, &c.

3. And for further and third plea in this behalf as to the said 1st count the defendant, by her attorneys aforesaid, says, (actio non) because, she says, that the said coupons mentioned in said count and the bonds mentioned in said count to which said coupons were

12 attached were made and issued by the common council of the city of Aurora, and the Ohio and Mississippi Railroad Company obtained possession thereof and held them in part payment of a subscription of fifty thousand ($50,000) dollars made by order of said council to the capital stock of said Ohio and Mississippi Railroad Company on the 28th day of September, 1850; and defendant says that on the day of , 1848, the general assembly of the State of Indiana passed an act entitled "An act to incorporate the Ohio and Mississippi Railroad Company," which act took effect on the 14th day of February, 1848, by the 13th section of which act the president and directors of said company are invested with full power to survey, locate, construct, and repair a railroad on the most direct and practicable route between Lawrenceburg, on the Ohio river, and Vincennes, on the Wabash river, and to extend the same eastwardly to Cincinnati, in the State of Ohio, and westwardly, through the State of Illinois, to the city of St. Louis, in the State of Missouri. And de-

fendant further says that the defendant, the city of Aurora, is a municipal corporation, and was charteted as such by an act of the general assembly of the State of Indiana, entitled "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter,"
13 approved February 14, 1848, and that by virtue of said charter the city council of said city, whenever a majority of the qualified voters of said city required it, are authorized and empowered to take stock in any chartered company for making roads to said city and to raise funds for the payment of said stock; the city council were authorized and empowered to make and sell their bonds issued under the seal of said corporation, with coupons attached thereto; and she says that said city council of said city of Aurora is invested with no power or authority whatever to take stock in any company that was not a chartered company, for making a road to said city, nor to issue her bonds to raise money to pay for any such stock. And defendant says that the said Ohio and Mississippi Railroad Company was not on said 28th of September, 1850, nor at any time previous thereto, a chartered company for making a road to said city of Aurora, or for doing any act or thing for the benefit of said city or for the promotion of the local interests thereof; and that on the 28th day of September, 1850, when said subscription was made by said city council for fifty thousand ($50,000) dollars of the capital stock in said Ohio and Mississippi Railroad Company, the road of said company,
14 that is to say, the Ohio and Mississippi railroad, was not located to through said city of Aurora; nor had said company, on or before said 28th day of September, 1850, decided upon nor determined the route of said road, nor whether said road should be into or through said city of Aurora; nor was said company then constructing, nor had they at any time previous to said day been engaged in constructing, their said road in, to, or through said city of Aurora, nor had said company in any way determined or decided that said road should be constructed to, through, or in said city of Aurora, and that the plaintiffs, at the time they became the holders and bearers of said bonds and coupons, had notice of all the foregoing facts. Wherefore defendant says that said subscription for stock in said railroad as aforesaid, and the above bonds and coupons issued as aforesaid, are null and void; and this she is ready to verify. Wherefore she prays judgment, &c.

4. And for further plea in this behalf as to said first count in said declaration, the defendant, by her attorneys as aforesaid, come and defend the wrong and injury when, &c., and says (actio non,) because, she says, that said bonds and coupons in said first count mentioned were made and issued by the city council of the city of Aurora, and the Ohio and Mississippi Railroad Company obtained
15 them and held them in part payment of a subscription made by said city council on behalf of the city of Aurora, on the 28th day of September, 1850, for fifty thousand ($50,000) dollars of the capital stock of said company, to wit, for 1,000 shares of stock in said company. And the defendant further says that the said city of Aurora was at the time of making the subscription aforesaid, and at

the time of making and issuing said bonds and coupons, and at the time when said railroad company obtained possession of them, and still is, a municipal corporation, created by the act of the general assembly of the State of Indiana approved February 14th, 1848, as stated in the foregoing 3d plea in this behalf, and that the city council of said city of Aurora, at the time said subscription was made and bonds and coupons issued, or at any time before or since, did not possess any power or authority whatever to subscribe for or take stock in any railroad or other road than that conferred by said act. And defendant says that by said act it is provided, among other things, that the city council of said city, whenever a majority of the qualified voters of said city requires it, shall have power, and they are thereby authorized, to take stock in any chartered company for making roads to said city, or for watering or lighting said city,

16 "Provided no such stock shall be subscribed on the part of the city until a majority of the qualified voters thereof have signified their assent thereto, by expressing on their tickets at any annual election that they are in favor of the subscription for such stock by the city council; and to raise funds for the payment of such stock the city council shall have power to make and sell their bonds under the seal of said corporation, payable in such manner and at such time as they may deem proper and expedient, bearing at the rate of six per cent. per annum, payable annually." And defendant alleges that a majority of the qualified voters of said city of Aurora did not, at an annual election, signify their assent to the making of said subscription by expressing on their tickets that they were in favor of subscribing for such stock by the city council, nor did a majority of the qualified voters of said city require the same to be done, nor did they confer upon the said city council any power or authority whatever to subscribe for said stock and issue said bonds and coupons: Of all of which the plaintiffs had notice. Wherefore defendant says that said subscription was made and said bonds and coupons issued without any authority whatever, and are null and void; all of which defendant is ready to verify. Wherefore defendant prays judgment, &c.

5. And for further plea in this behalf defendant, by her said

17 attorneys, comes and defends, &c., as to said first count, and says (actio non,) because, she says, that the bonds and coupons in said first count mentioned were made and issued, and said Ohio and Mississippi Railroad Company obtained possession thereof in manner and for the consideration mentioned and set forth in the foregoing 3d and 4th pleas of the defendant in this behalf; and defendant says that the said Ohio and Mississippi Railroad Company was and is a company chartered by the general assembly of the State of Indiana in manner and form, and for the purpose and with the power mentioned in said 3d and 4th pleas; and defendant says that said city of Aurora is and was on the said 28th of September, 1850, when said subscription for stock was made by order of the city council, and is and was on the 1st day of January, 1852, when said bonds and coupons were issued, and said *said* Ohio and Mississippi Railroad

Company obtained them, as aforesaid, a municipal corporation, created by an act of the general assembly of the State of Indiana, as stated and set forth in said 3d and 4th pleas of the defendant in this behalf, possessing the power vested in said corporation by said last-mentioned act, and possessing no power whatever to take stock in any company, making a road to the city of Aurora, not chartered
18 for that purpose; and the defendant says that the O. and M. R. R. Co. was not a company chartered for making a road to said city, and furthermore, that the said Ohio and Miss. R. R. Co. did not decide and determine until the 23d day of July, 1852, to locate said road to and through the said city of Aurora, and said road was not located to said city until months after the said 23d of July, 1852: Of all of which facts the plaintiffs had notice. Wherefore the defendant says that the said subscription made for said stock by said city council, and the bonds and coupons issued and held as payment thereof by said railroad company, were and are null and void; and this she is ready to verify. Wherefore she prays judgment, &c.

6. And for further plea in this behalf to the said 1st count of plaintiffs' declaration, the defendant comes and defends, &c., and says (actio non,) because, she says, that said Ohio and Miss. Railroad Company was not a chartered company for making a road or roads to the city of Aurora, and was not on the 28th of September, 1850, when said subscription for stock, as stated in 3d and 4th pleas of defendant in this behalf, was made, making and constructing, and had not been at any time before said day engaged in making and constructing a railroad or any other road to, through, or from said city of Aurora; but said railroad company was, by the 13th sec. of the act of the gen-
19 eral assembly of the State of Indiana, incorporating it, authorized to survey, locate, and construct a railroad on the most direct and practicable route between Lawrenceburg, on the Ohio river, and Vincennes, on the Wabash river, having in view the interests of the company and the convenience of the citizens of the State of Indiana, with the privilege of extending the same eastwardly to Cincinnati, in the State of Ohio, and westwardly, through the State of Illinois, to St. Louis, in the State of Missouri; that the said company were not authorized to construct, and never has, since the incorporation thereof, been engaged in *in* the construction of any other road than the railroad contemplated by the said 13th section of their said act of incorporation. And def't avers that on said 28th of September, 1850, the day on which the city council of said city made the said subscription of $50,000 in and to the capital stock of said railroad company, the said company were not engaged in making or constructing their said railroad in, to, or through the said city of Aurora, nor had said company at the time of making said subscription by said city council located, nor had they decided or determined to locate their said railroad to the said city of Aurora, nor had they made any location of said road between Lawrenceburg, on the Ohio river, and Vincennes, on the Wabash river. And def't further avers that
20 on the 1st day of January, 1852, the day, on which said bonds and coupons were made and issued, and said railroad company

obtained possession thereof, the said company were not making, nor had said company, at any time before the 1st day of January, 1852, been engaged in making their said road to or through the said city of Aurora, nor had said companies located or determined to locate their said road to or through said city on the said 1st day of January, 1852, when said bonds and coupons were made and issued by said city council, or at any time preceding that day. And def't alleges that said subscription was made for capital stock in said railroad company, and said bonds and coupons were made, and said railroad company obtained possession thereof, and held them in part payment of said subscription and accruing interest thereon, and, *and* for no other purpose or consideration whatever: Of all of which the plaintiffs had notice. Wherefore the def't says that the said Ohio and Mississippi railroad company was not a company chartered for making a road or roads to the city of Aurora, or to do any other act or thing touching the local affairs of said city within the meaning of the act of incorporation of said city, and that said company had not at or before the time when said subscription was made, nor on the said 1st day
21 of January, 1852, when said bonds and coupons were issued as aforesaid, located their said road to or through said city, and were not constructing or making the same to and through said city, and that the said subscriptions of stock, and the said bonds and coupons so held in payment thereof, are wholly null and void. Wherefore she prays judgment, &c.

7. And for further and 7th plea in this behalf as to the said first count in the said declaration, the defendant, by her attorneys aforesaid, says that the said action ought not to be maintained against her, because, she says, that at the time of making the subscription and at the time of the alleged making said bonds and coupons the said Ohio and Mississippi Railroad Company was and is a company chartered by the general assembly of the State of Indiana in manner and form, and for the purpose, and with the powers mentioned in the said 3d and 4th pleas, and the said city of Aurora was, and still is, a municipal corporation, created by the act of the general assembly of the State of Indiana, approved February 14th, 1848, as stated in the foregoing 3d plea in this behalf, and the said city council of said city of Aurora at the time said subscription was made, and said bonds and coupons issued, or at any time before or since, did not possess any power or authority whatever to subscribe for or take stock in any railroad or other road, or raise funds for the payment of such stock, or
22 to make, execute, deliver, or otherwise dispose of her bonds and coupons than that conferred by the said act.

The defendant further avers that the said bonds and coupons were made by the said city council of the city of Aurora, and passed into the possession of the said Ohio and Mississippi Railroad Company, and were held in payment of one thousand shares of the stock of said railroad company of the par value of fifty dollars per share, then and there subscribed by the said city council, by the said city of Aurora as set out in said third plea; that the said stock at the time the said subscription was made was of the par value thereof, but that through

the gross and reckless mismanagement of the directors and officers of the said railroad company the said stock, before it was issued for the said city council of the city of Aurora, had become of no value, and was wholly worthless, and there has been a failure of consideration for the said bonds and coupons, and the said railroad company had no right to hold the said bonds and coupons, and that the said stock has thus become worthless before the plaintiffs became the holders thereof. The defendant avers that during all of said time the said West, one of the plaintiffs, and a partner of the other, was a director of the said railroad company, and consented and contributed to the said mismanagement of their affairs, and the said depreciation of
23 its said stock: Of all which, and long prior to the time, when they obtained possession of the said bonds and coupons, the plaintiffs had notice. And the defendant therefore avers that the said bonds and coupons are null and void, all of which the defendant is ready to verify. Wherefore she prays judgment, &c.

8. And for a further and 8th plea in this behalf as to the 1st count in the said declaration, the defendant, by her attorneys aforesaid, says that the said action ought not to be maintained against her, because, she says, that at the time of making the said subscription of stock in the 3d plea above mentioned, and at the time of making the said bonds and coupons, and at the time the said railroad company got possession of them, the said Ohio and Mississippi Railroad Company was, and is, a company chartered by the general assembly of the State of Indiana in manner and form, and for the purpose and with the powers mentioned in said 3d and 4th pleas, and the said city of Aurora was, and still is, a municipal corporation, created by the act of the general assembly of the State of Indiana approved February 14, 1848, as stated in the foregoing 3d plea in this behalf, and that the city council of said city of Aurora at the time the said subscription was made and the said bonds and coupons issued, or at any time before or since, did not possess any power or authority what-
24 ever to subscribe for or take stock in any railroad or other road, or raise funds for the payment of such stock, or to make, execute, deliver, or otherwise dispose of her bonds and coupons than that conferred by the said act; that by the 18th section of the said act it was provided that whenever the said city council of the said city of Aurora took stock in any chartered company for making roads to said city, the said city council should have power and authority, for the purpose of raising funds for the payment of such stock, to make and sell their bonds of the tenor therein prescribed, and had no other or further power or authority in relation thereto. The defendant avers that the said coupons and the said bonds to which said coupons were attached in the said 1st count in the said declaration mentioned were prepared for the payment of a subscription of stock by the said city council of the city of Aurora to the said Ohio and Mississippi railroad, as aforesaid, but that the said city council of the said city of Aurora never made and sold the said bonds as required by the terms of the said act, but the same came into the hands and possession of the said Ohio and Mississippi Railroad Company long

prior to the issue of any such stock by the said railroad company for the same without such sale and without any authority whatsoever from the defendant.

The said defendant further avers that said bonds and coupons were never sold by the said city council of Aurora, nor by any authority conferred by them, and are null and void; that during all said time the said West, one of the plaintiffs and a partner of the other plaintiff, was a director of the Ohio and Mississippi Railroad Company, and had notice of all of the said facts. And the said plaintiffs had notice of the said facts at the time they got possession of the said bonds and coupons.

All of which the defendant is ready to verify. Wherefore she prays judgment, &c.

T. D. LINCOLN,
JER. SULLIVAN,
JNO. D. HAYNES,
Att'ys for Defendants.

And afterwards, in the court aforesaid and before the judge aforesaid, at the November term thereof, for the year one thousand eight hundred and sixty-four, to wit, on the 20th day of December, the following proceedings were had in said cause, to wit:

Continued.

And afterwards, in the court aforesaid and before the judge aforesaid, at the May term thereof, for the year one thousand eight hundred and sixty-five, to wit, on the fifteenth day of May the following proceedings were had in said cause, to wit: Come now the plaintiffs, by Messrs. Porter & Fishback, their attorneys, and file now in open court their replication to the special pleas filed heretofore by the defendants in this cause, and day is given; which replications are in the words and figures following, to wit:

In the circuit court of U. S. for the district of Indiana, May term, 1865.

CHARLES W. WEST and JOSEPH TORRENCE
vs.
CITY OF AURORA.

1*st rep.*—And the said pl'ffs, as to the said plea by the defendant secondly above pleaded, say that the defendant ought not to be permitted in its said plea to aver that the bonds in the said first count of the pl'ffs' declaration mentioned, and the coupons which were attached thereto, passed into the possession of the Ohio and Mississippi Railroad Company without any good or valuable consideration, of which the plaintiffs at the time they became the holders and bearers thereof had notice, because, heretofore, to wit, at the term of May, 1856, of the circuit court for the county of Dearborn, in the State of Indiana, the plaintiffs' impleaded the said defendant, (together with said Ohio and Mississippi Railroad Company, who was made a defendant only as the assignor of said bonds to the plaintiffs,) in a certain action for the recovery of the amount of the coupons attached to the same fifty bonds of the defendant, which are

mentioned in the declaration in this suit, and which had fallen due on the 1st day of January, 1856, and therein complained against said defendant that on the day of September, 1850, the said city of Aurora, by virtue of the authority vested in her by the act of the general assemby of the State of Indiana, entitled "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter," approved February 14, 1848, subscribed for and took fifty thousand dollars of the capital stock of said Ohio and Mississippi Railroad Company, a company chartered to construct and then constructing a railroad to said city, a majority of the qualified voters of the said city, having first expressed their assent to such subscription by expressing on their ballots, at an annual election in said city, that they were in favor of such subscription; and that to raise funds for the payment for said stock, the said city made, sold, and delivered to said Ohio and Mississippi Railroad Company fifty of the bonds of said city, by each of which the said city acknowledged itself to be indebted to the Ohio and Mississippi Railroad Company, or
28 bearer, in the sum of one thousand dollars, negotiable and payable at the North River Bank, in the city of New York, twenty-five years from the date thereof, upon the presentation and delivery of the proper coupons thereto attached, signed by clerk of said city, and which bonds, with the coupons so attached to the same, were afterwards, on the day of , 1852, sold, transferred, and assigned by the said Ohio and Mississippi Railroad Company to the plaintiffs, who ever since had been the holders and owners thereof, and that the said city of Aurora had failed and refused to pay the said coupons which had fallen due January 1st, 1856. And at the same term the said defendant filed an answer to said complaint in two paragraphs, by the first of which the said defendant alleged that the said Ohio and Mississippi Railroad Company was not chartered to construct, and was not on the day of , 1850, at the time when such subscription for $50,000 of the capital stock of said company was made, constructing a railroad to said city of Aurora; but that said company was incorporated by an act of the general assembly, of which took effect February 14th, 1848, to construct a railroad on the most direct and feasible route between Lawrenceburg,
29 in the county of Dearborn, and Vincennes, in the county of Knox. And that at the time said subscription was made as aforesaid, the said company had not located their road through the said city of Aurora, and that said subscription was made for capital stock of said company, and said bonds and coupons were issued in payment of said subscription, and accruing interest thereon, and for no other purpose. Wherefore, the said defendant said that the said company was not chartered to construct, and were not at the time of said subscription engaged in constructing, a railroad to the city of Aurora, within the meaning of the 18th section of the charter of said city, and that said subscription and the bonds and coupons issued thereon were therefore unauthorized and void. And by the second of which paragraphs the said defendants alleged that the Ohio and Mississippi Railroad Company was not chartered to construct, and

was not on the day of September, 1850, at the time when said subscription was made, constructing, a railroad to said city of Aurora, and that therefore said subscription and the bonds and coupons issued thereon were unauthorized and void; and thereupon the plaintiffs in said action demurred to the 1st paragraph of said answer,
30 upon the ground that the same did not state facts sufficient in law to bar the plaintiffs' action. And for reply to the 2d paragraph of said answer, alleged that the said Ohio and Mississippi Railroad Company, by virtue of its charter, had constructed and finished a railroad from Seymour, in the county of Jackson, to said city of Aurora, and thence to the mouth of the Great Miami river, and was engaged in extending said road to Vincennes, having also finished it from the Miami river to the city of Cincinnati, and that the bonds in the complaint referred to, with the coupons attached, were issued and delivered to the Ohio and Mississippi Railroad Company by the said city of Aurora, after the said railroad had been surveyed and located as and where the same had since been finished, and for the purpose in the complaint alleged; to which reply the said defendant demurred, upon the ground that the same did not state facts sufficient in law to maintain the plaintiffs' action. And afterwards, at the term aforesaid, the said circuit court did determine said action upon the demurrers aforesaid, and sustained the said demurrer to the 1st paragraph of the said answer, and overruled the said demurrer to
31 the said plaintiffs' reply, and rendered final judgment in said action, as follows:

And the said city not desiring to controvert the facts stated in said reply, but admitting the same, and that the amount of said bonds and coupons is the sum in the complaint stated, it is therefore considered by the court that the plaintiffs recover of said city of Aurora the sum of three thousand and ninety-six dollars, being the amount of the several coupons in the complant mentioned, together with the costs, &c., as by the record of said action, ready to be produced to this court, will more fully appear. And the plaintiffs aver that said judgment is still in force; that the plaintiffs and the city of Aurora, named as parties in that record, and the same parties as in this suit, and that the said fifty bonds, with coupons attached, in the pleadings in that action mentioned, and the fifty bonds in the present suit mentioned, are the same identical bonds: All which the plaintiffs are ready to verify. Wherefore they pray judgment if the defendant ought to be admitted against the said record to aver that the bonds in the first count of the plaintiffs' declaration mentioned, and the coupons that were attached thereto, passed into the possession of the Ohio and Mississippi Railroad Company, without any good
32 and valuable consideration, of which the plaintiffs, at the time they became the holders and bearers thereof, had notice as by said 2d plea the defendant has averred.

2*d rep.*—And the said plaintiffs as to the said pleas by the said defendant secondly, thirdly, fourthly, fifthly, sixthly, seventhly, and eighthly, above pleaded, say that the defendant ought not to be admitted by its said second plea to aver that the said bonds and cou-

pons in the declaration mentioned passed into the possession of the said Ohio and Mississippi Railroad Company without any good or valuable consideration, of which the plaintiffs, at the time they became the holders of said bonds and coupons, had notice, nor by its said third, fourth, fifth, sixth, seventh, and eighth pleas, to aver that the said bonds and coupons were null and void, as in each of said pleas is alleged, nor that there was a failure of the consideration of said bonds and coupons as in said seventh plea alleged; nor that said bonds and coupons were not sold by the defendant in said railroad company as the charter of s'd city required, but came into the possession of said railroad company without a sale and without any authority from the defendant, of which the plaintiff, when they obtained them,
33 had notice, as in the 8th plea is alleged, because, they say, that heretofore, to wit, at the May term, 1857, of the circuit court of the United States for said district of Indiana, the said plaintiffs impleaded the said defendant in a certain action of assumpsit for the recovery of the amount of the coupons which were attached to the same fifty bonds of the defendant, which are mentioned in the declaration in this suit, and which had fallen due on the 1st day of January, 1857, and therein complained by the first count of their declaration against said defendant; that by virtue of the power conferred on it by an act of the general assembly of the State of Indiana, entitled "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter," approved February 14th, 1848, said defendant did lawfully and in due form, and for a valuable consideration, execute and issue fifty bonds, under the seal of said corporation and the signature of the mayor and clerk thereof, and bearing date the 1st day of January, 1852, by each of which bonds the defendant acknowledged herself to be indebted to the Ohio and Mississippi Railroad Company, or bearer, in the sum of one thousand dollars, negotiable and payable at the North River Bank, in the city of New York, twenty-five years from the date thereof, upon the presentation
34 and delivery of said bonds, bearing an interest of six per cent. per annum, payable annually, on the 1st day of January, at said bank, on the presentation and delivery of the proper coupons thereto attached, signed by the clerk of said city; and that the plaintiffs, for a valuable consideration, had become the legal owners and holders of said fifty bond and coupons thereto attached; and that the defendant had failed to pay the plaintiffs the coupons or annual instalment of interest which had fallen due on the 1st day of January, 1857, as by the said coupons the said defendant had promised. And at the said May term of said court, said defendant filed its demurrer to the first count of said declaration, and therein alleged that the said first count did not state facts sufficient to constitute a cause of action against said defendant, which demurrer the said court afterwards, at the same term, to wit, on the 29th of May, 1857, overruled. And the defendant making no further defence to said action, the said court thereupon assessed the plaintiffs' damages for the breach of the promises in said first count mentioned, at three thousand and seventy-five dollars. Whereupon it was considered and adjudged by the said

court that the plaintiffs should recover of the defendant the said sum of three thousand seventy-five dollars, as also their costs
35 and charges therein expended, as by the record of said action in this court still remaining will more fully appear. And the plaintiffs aver that said judgment is still in force; that the plaintiffs and in the city of Aurora, named as parties in that action, are the same parties as in this suit; and that the said fifty bonds, with the coupons referred to in the same in said first count of said declaration mentioned, and the fifty bonds with the coupons therein referred to, which are mentioned in the first count of the declaration in this suit, are the same identical bonds. All of which the plaintiffs are ready to verify. Wherefore they pray judgment if the defendant ought to be admitted against the said record to aver that the said bonds and coupons in the declaration in the suit mentioned passed in the possession of said Ohio and Mississippi Railroad Company without any good or valuable consideration, as in said 2d plea alleged; or that the said bonds and coupons were null and void, as in said third, fourth, fifth, sixth, seventh, and eighth pleas is alleged; or that said bonds and coupons were not sold by the defendant to said railroad company as the charter of said city required, but came into the possession of said company without a sale and without any authority from the defendant, of which the plaintiffs, when they had obtained them, had notice, as in the said eighth plea is alleged; or that there
36 was a failure of the consideration of the said bonds and coupons as in the said seventh plea is alleged.

(Third and fourth replications withdrawn from record.)

5th rep.—And the said plaintiffs as to the said pleas by the defendant, thirdly, fourthly, fifthly, and sixthly, seventhly and eighthly, above pleaded, say that the defendant ought not to be ad-
37 mitted by said third plea to aver that the said Ohio and Mississippi Railroad Company was not, on the 28th of September, 1850, nor at any time previous thereto, a chartered company for making a road to said city of Aurora, or for doing any act or thing for the benefit of said city, or for the promotion of the local interests thereof; and that on the 28th day of September, 1850, when the subscription was made by the council of said city, for $50,000 of the capital stock of said railroad company; it was not located to or through said city of Aurora, and that said company had not, on or before that day determined the route of said road, nor whether it should be located through said city; and that said company was not then constructing, and had not previously been engaged in constructing, their road to or through said city, and that the plaintiffs, at the time they became the holders and bearers of said bonds and coupons had notice of said facts; nor by said fourth plea, to aver that a majority of the qualified voters of said city did not at any annual election, signify their assent to the making of said subscription, by expressing on their tickets that they were in favor thereof, and that a majority of the qualified voters of said city did not require the same to be done, nor confer upon the council any authority to subscribe for said stock,

and issue said bonds and coupons, of all of which the plaintiffs
38 had notice, as in said fourth plea is averred; nor to aver that the said railroad company was not chartered for making a road to said city, and that said company did not determine until the 23d of July, 1852, to locate said road to said city, and that said road was not located to said city until months thereafter, of which facts the plaintiffs had notice, as in said fifth plea the defendant has alleged; nor that the said bonds and coupons are null and void, as the defendant in its sixth, seventh, and eighth pleas has averred; nor that there has been a failure of the consideration of said bonds and coupons, as in said seventh plea alleged; nor that said bonds and coupons were not made and sold by the defend. as required by the terms of its charter, but came into the possession of said railroad company without sale, and without any authority from the defendant, as defendant in said 8th plea hath alleged; because, they say, that heretofore, to wit, at the May term of 1856, of the circuit court for the county of Dearborn, State of Indiana, the plaintiffs impleaded the said defendant, together with the Ohio and Mississippi Railroad Company (who was a formal defendant only) in the action in the first replication to the 2d plea of said defendant mentioned, for the
39 recovery of the coupons which were attached to said bonds, and which fell due on the 1st day of January, 1856, and therein filed their complaint against said defendant, said city of Aurora, to which complaint said city of Aurora filed an answer in two paragraphs, to the first of which paragraphs the plaintiffs filed a demurrer, and to the 2d of which the said plaintiffs filed a reply, to which the said city demurred; the said complaint, answers, reply, and demurrer being the same which are specially set forth in the first replication herein filed to the 2d plea of the defendant in this action—which demurrers were determined by the said circuit court in favor of the said plaintiffs, as in said 1st replication alleged, and final judgment was rendered therein in favor of the said plaintiffs, and against said city for the amount of said coupons due January 1st, 1856, in manner and form as is set forth in said 1st replication, to which, for greater certainty reference is hereby made. And the plaintiffs aver that said judgment is still in force, that the plaintiffs and the city of Aurora named as parties in that action are the same parties as in this suit, and that the said fifty bonds with coupons referred to therein, in the complaint in that action mentioned; and the fifty bonds with the coupons referred to therein, in the declaration in this suit mentioned, are the same identical bonds: All of which the said
40 plaintiffs are ready to verify. Wherefore the pl'ffs pray judgment if the said defendant ought to be admitted as against the said record, to aver by said third plea that the said Ohio and Mississippi Railroad Company was not on the of September, 1850, nor at any time previous thereto a chartered company for making a road to said city of Aurora, nor for doing any act or thing for the benefit of said city, or for the promotion of its local interests; and that on the 28th of September, 1850, when the subscription was made by the council of said city, for fifty thousand dollars in capital stock

in said railroad company, its road was not located to or through said city of Aurora, and that said company had not on or before that day determined the route of said road, nor whether it should be located to or through said city, and that said company was not then constructing, and had not previously been engaged in constructing, their road to or through said city, and that the planters at the time they became the holders and bearers of said bonds and coupons, had notice of said facts; nor by said fourth plea to aver that a majority of *of* the qualified voters of said city did not at an annual election signify their assent to the making of said subscription by expressing on their tickets
41 that they were in favor thereof, and that a majority of the qualified voters of said city did not require the same to be done, nor confer upon the said council any authority to subscribe for said stock and issue said bonds and coupons, of which said plaintiffs had notice; nor to aver that the said railroad was not chartered for making a road to said city, and that said company did not determine until the 23d of July, 1852, to locate said road to said city, and that said road was not located to said city until months thereafter, of which facts the plaintiffs had notice, as in said fifth plea is alleged; nor that said bonds and coupons, as the defendants in its several pleas first above mentioned has averred, or that there has been a failure of consideration of said bonds and coupons as in said seventh plea alleged, or that said bonds and coupons were not made and sold by the defendant as required by the terms of its charter, but come into the possession of said railroad company without such sale, and without any authority from the defendant, as in said eighth plea the defendant hath alleged.

6th rep.—And the said pl'ffs, as to the said plea by the said defendant thirdly above pleaded, say that the defendant ought not to be permitted in its said plea to aver that the said bonds in the first count of the declaration mentioned and the coupons at-
42 tached thereto were unauthorized and void, because a majority of the qualified voters did not at an annual election signify their assent to the making of a subscription by said city for the stock of said Ohio and Mississippi Railroad Company, nor require said subscription to be made, or confer upon the city council of said city any power to subscribe for such stock and issue said bonds and coupons in payment therefor, of which the pl'ffs had notice, because, they say, that heretofore, to wit, at the May term, 1856, of the circuit court for the county of Dearborn, and State of Indiana, the pl'ffs impleaded the said defendant, together with the Ohio and Mississippi Railroad Company (who was *was* a formal defendant only) in the action in the first replication to the second plea of said deft. mentioned, for the recovery of the coupons which were attached to said bonds, and which fell due on the first day of January, 1856, and therein filed their complaint against said defendant, said city of Aurora, to which complaint said city of Aurora filed an answer in two paragraphs, to the first of which paragraphs the pl'ffs filed a demurrer, and to the second of which the said pl'ffs filed a reply, to which the said city demurred, the said complaint, answer, reply, and demurrers

being the same which are specially set forth in the first replication herein filed to the second plea of the defendant in this action, which demurrers were determined by the said circuit court
43 in favor of the said pl'ffs, as in said first replication alleged, and final judgment was rendered therein in favor of the said pl'ff and against the said city for the recovery of the amount of said coupons due January 1st, 1856, in manner and form as is set forth in said first replication, to which, for greater certainty, reference is hereby made. And the pl'ffs aver that said judgment is still in force, that the pl'ffs and the city of Aurora, named as parties in that action, are the same parties as in this suit, and that the said fifty bonds, with the coupons referred to therein, in the complaint in that action mentioned, and the fifty bonds, with the coupons referred to therein, in the declaration in this suit mentioned, are the same identical bonds: All of which the said pl'ffs are ready to verify. Wherefore they pray judgment if the said defendant ought to be admitted against the said record to aver that the said bonds, in the first count of the declaration in this case mentioned, and the coupons attached thereto, were unauthorized and void, because a majority of the qualified voters of said city did not at an annual election signify their assent to the making of a subscription by said city for the stock of said Ohio and Mississippi Railroad Company, nor require said subscription to be made, or confer upon the said city council of said city any power to subscribe such stock, and issue said bonds and cou-
44 pons in payment therefor, of which the pl'ffs had notice.

7th rep.—And the said plaintiffs, for further replication to the plea of the defendant fourthly above pleaded, say (precludi non,) because, they say, that before the defendant made said subscription for fifty thousand dollars of the capital stock of said Ohio and Mississippi Railroad Company, a majority of the qualified voters of said city did express their assent to said subscription by expressing on their tickets, at an annual election, that they were in favor of such subscription. And of this, &c.

And the defendant doth the like.

HOLMAN & LINCOLN, *Att'ys.*

8th rep.—And for further replication to the plea of the defendant fourthly above pleaded, the plaintiffs say that the defendant ought not to be admitted to aver that a majority of the qualified voters of said city of Aurora did not, at an annual election, signify their assent to said subscription by said city for fifty thousand dollars of the capital stock of said company by expressing on their tickets that they were in favor thereof, because, they say, that in and by each of said bonds the said defendant acknowledged that such bond was issued in conformity with the eighteenth section of the charter of
45 said city, and at the time the plaintiffs became the holders and bearers of said bonds and coupons they relied upon said declaration, and believed it to be true. And this they will verify. Wherefore they pray judgment if the said defendant ought to be admitted, against their own acknowledgment by the bonds aforesaid, to aver

that a majority of the qualified voters of said city had not previously expressed their assent to the making of said subscription, as the charter aforesaid required.

9*th rep.*—And the said pl'ffs, for further replication to the plea of the defendant 3dly, 4thly, 6thly above pleaded, say (precludi non,) because, they say, that the most direct and practicable route for the railroad in said plea mentioned between Lawrenceburgh and Vincennes, having in view the interests of the said railroad company and the convenience of the citizens of Indiana, was by the way of and through the said city of Aurora, where the same was accordingly located and constructed, and that the said Ohio and Mississippi Railroad Company was therefore a chartered company for making a road to said city at the time the defendant subscribed for said stock therein, and at the time it issued the said bonds and coupons in payment for said stock. And this they are ready to verify, &c.

46 10*th rep.*—And the said pl'ffs, as to the said plea by the said defendant 3dly, 5thly, and 6thly above pleaded, say (precludi non,) because, they say, that at a meeting of the city council of the city of Aurora aforesaid, held in said city on the 28th day of September, 1850, an order was unanimously adopted in the words and figures following:

"Ordered by the city council of the city of Aurora that whereas the qualified voters of the city of Aurora, at the annual election of said city, held on the first Monday in April, A. D. 1849, in and for said city of Aurora, signified by a large majority of the votes cast at said election that the city council of said city shall subscribe, on behalf of said city, fifty thousand dollars in the capital stock of the Ohio and Mississippi Railroad Company, in pursuance of the 18th section of an act of the general assembly of the State of Indiana, granting to the inhabitants of the town of Aurora a city charter, approved February 14, 1848, John D. Haynes, mayor of said city of Aurora, is therefore hereby authorized and required to subscribe on behalf of said city of Aurora on the stock books of said railroad company one thousand shares, being fifty thousand dollars, in the capital stock of the Ohio and Mississippi Railroad Company, to be expended
47 in the construction of said in and west of said city of Aurora."

And on the same day the said John D. Haynes, then mayor of said city, at the foot of a certified copy of said order, did make a subscription on behalf of said city on the stock books of said company in the terms following:

"In pursuance of the foregoing order of the city council of the city of Aurora, I, John D. Haynes, mayor of the city, do hereby subscribe on behalf of said city of Aurora in the capital stock of said Ohio and Mississippi Railroad Company one thousand (1,000) shares, $50,000.

"In witness whereof, I, John D. Haynes, mayor of the city of Aurora, have hereunto set my hand and affixed the seal of said city of Aurora this 28th day of September, 1850.

[SEAL.] "JOHN D. HAYNES, *Mayor.*"

And the said pl'ffs further say that before the said city received the said one thousand shares of said stock or issued the bonds and coupons in the declaration mentioned in payment therefor, and at the time of the delivery of the same to said company, the said Ohio and Mississippi Railroad Company had constructed and finished their said railroad from Seymour, in the county of Jackson, Indiana, to said city of Aurora, and thence to the mouth of the Great
48 Miami river, and from the Great Miami river to the city of Cincinnati, in the State of Ohio, and was then engaged in extending said railroad westwardly to Vincennes.

11*th rep.*—And for further replication to the said plea of the defendant thirdly above pleaded, the said pl'ffs say (precludi non,) because, they say, that before the 28th day of September, 1850, the said Ohio and Mississippi Railroad Company had determined to locate and construct its railroad from Lawrenceburgh, in Indiana, to Vincennes, in the same State, by way of and through said city of Aurora. And of this the pl'ffs put themselves upon the country, &c.

12th replication withdrawn from the record.

49 13*th rep.*—And for further replication to the 5th plea of said def't, the pl'ff say that before the 28th day of September, 1850, the said Ohio and Mississippi Railroad Company had determined to locate and construct its railroad from Lawrenceburgh, in Ind'a, to Vincennes, in same State, by way of and through said city of Aurora. And of this they put themselves upon the country, &c.

(Fourteenth replication withdrawn from record.)

15*th rep.*—And for further replication to the 6th plea of said defendant herein the pl'ffs say that before the 28th day of September, 1850, the said railroad company had determined to locate and construct its road from Lawrenceburgh, in Indiana, to Vincennes, in the same State, by way of and through the said city of Aurora. And of this they put themselves on the country, &c.

50 (16th, 17th, and 18th replications withdrawn from record.

PORTER & FISHBACK,
51 P. L. SPOONER,
T. G. MITCHELL, and
A. BROWER, *for Pl'ffs.*

Here follows the proceedings and judgment of the Dearborn circuit court in the cause entitled Charles W. West and Joseph Torrence *vs.* The City of Aurora, The Ohio and Mississippi Railroad Company, above by said plaintiffs in their replication pleaded, in these words and figures, to wit:

Pleas began and held at Lawrenceburgh, Dearborn county, Indiana, before the honorable Reuben D. Logan, judge of the 4th judicial circuit of said State, it being the term of the Dearborn circuit court for the year of our Lord one thousand eight hundred and sixty.

CHARLES W. WEST, JOSEPH TORRENCE
vs.
THE CITY OF AURORA, THE OHIO and Mississippi Railroad Company. } Civil action.

52 Be it remembered that heretofore, to wit, on the 23d day of April, in the year 1856, Charles W. West and Joseph Torrence, plaintiffs, by Spooner & Brower, their attorneys, filed in the clerk's office of the Dearborn circuit court their complaint, in writing, against the city of Aurora and the Ohio and Mississippi Railroad Company, defendants, in the words and figures following, to wit:

STATE OF INDIANA, *Dearborn county:*

Dearborn circuit court, May term, 1856.

CHARLES W. WEST and JOSEPH TORRENCE
vs.
THE CITY OF AURORA and THE OHIO AND Mississippi Railroad Company.

Charles W. West and Joseph Torrence, plaintiffs, complain of the city of Aurora and the Ohio and Mississippi Railroad Company, defendants, and says:

1st. That heretofore, to wit, on the day of September, 1850, the said city of Aurora, by virtue of the authority vested in her by an act of the general assembly of s'd State, entitled "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter," approved February 14, 1848, subscribed for and took fifty thousand dollars of the capital stock of the said Ohio and Mississippi Railroad Company, a company chartered to construct
53 and then constructing a railroad to said city, a majority of the qualified voters of said city having first expressed their assent to such subscription by expressing on their tickets at an annual election in said city that they were in favor of the subscription for such stock by the city council of said city; and to raise funds for the payment of said stock, the said city of Aurora made, and sold, and delivered to said Ohio and Mississippi Railroad Company fifty of the bonds of said city, by each of which bonds the said city acknowledged itself indebted to the said Ohio and Mississippi Railroad Company, or to the bearer of such bond, the sum of one thousand dollars, negotiable and payable at the North River Bank, in the city of New York, twenty-five years from the date of such bond, upon the presentation and delivery of the same, bearing an interest of six per cent. per annum, payable annually on the first day of January, at said bank, in the city of New York, upon presentation and delivery of the proper coupons attached to said bond; all of which and all the said interest coupons attached to the same were afterwards, to wit, on the day of , to wit, at the county aforesaid, sold, and transferred, and assigned by the said Ohio and Mississippi Railroad Company to the plaintiffs, who ever since have been and now are the holders and owners of
54 the same, which said bonds were sealed with the corporate seal of said city, dated the 1st day of January, 1852, and numbered

from one to fifth, both inclusive, a copy of one of which bonds, being of that designated "No. 1," is filed herewith, and the same is a copy of all of said bonds with the exception of the No. by which they are respectively designated.

And the plaintiffs further in fact say that on the 1st day of January, 1856, they were the bearers and owners of that certain note or instrument in writing made by said city of Aurora, called an interest coupon, attached to that of one of said bonds which is designated No. 1, signed by the clerk of said city, (a copy of which is herewith filed,) by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in said city of New York, on the 1st day of January, 1856, being annual interest on the s'd bond No. 1; and on said last-named day plaintiff caused the said note or coupons to be duly presented for payment in and at the said North River Bank, and payment of the same was then and there duly demanded and was refused, the said city of Aurora having no funds in said bank for payment thereof. And the pl'ffs further say that by a statute passed by the legislature of the State of New York, approved January 1st, 1836, and ever since
55 in force as a law of said State, it was enacted (by the 1st section) "That all notes in writing made and signed by any person, whereby he shall promise to pay to any other person, or his order or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange, according to the custom of merchants." And by the 2d section, "that every such note signed by the agent of any person under a general or special authority, shall bind such person and shall have the same effect and be negotiable as above provided," and by the 3d section, "that the word person in the two last preceding sections shall be construed to extend to every corporation capable by law of making contracts," and by section 4th, "that the payee or indorsers of every such note, payable to them or their order, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned against the makers and indorsers of the sums respectively, in like manner as in case of inland bills of exchange;" and by a certain other statute, passed and approved on the said 1st day of January, 1836, and ever since in force as a law of the State of New York, it was enacted "that the rate of interest
56 upon the loan and forbearance of any money, goods, or things in action, shall continue to be seven dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time.

2. And the plaintiffs further state that on the 1st day of January, 1856, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds, issued as in the 1st paragraph alleged, and numbered No. 2, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the first day of January, 1856, being annual interest on said bond No. 2, and on the day last named the pl'ffs caused the said coupon (a copy of which is filed

herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, and then and there refused, there being no funds in said bank for payment thereof, and the same is still unpaid; and at the date of said bond and coupon and when said coupon became due the said statutes in said paragraphs hereof set forth were and still are in force as laws in the said State of New York.

No. 3. And the pl'ffs further state that on the 1st day of January, 1856, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds in the 1st paragraph mentioned, which was and is designated as No. 3, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 3, and on the day and year last af'd the pl'ffs caused the said last-named coupon (of which a copy is filed herewith) to be duly presented for payment in said North River Bank, in said city of New York, to the paying teller thereof, but payment thereof was then and there refused, there being no funds in said bank for payment thereof, and the same is still unpaid, of which presentment and non-payment said Ohio and Mississippi Railroad Company then and there had due notice; and at the date of said bond and when said coupons became due the said statutes in the 1st paragraph hereof set forth were and still are in force as laws in the State of New York.

57

No. 4. And the pl'ffs further state that on the 1st day of January, 1856, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds in the 1st paragraph mentioned, which was designated as No. 4, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 4, and on the said first day of January, 1856, the pl'ffs caused the said last-named coupon (a copy of which is filed herewith) to be duly presented for payment at said North River Bank, in the city of New York, to the paying teller thereof, but payment of the same was then and there refused, there being no funds in said bank for payment thereof, and the same is still unpaid, of which presentment and non-payment s'd Ohio and Mississippi Railroad Company then and there had notice; and at the date of said bond and when said coupon became due, the statutes in the first paragraph hereof set forth, were and still are in force as laws in the said State of New York.

58

No. 4. And the pl'ffs further state that on the 1st day of January, 1856, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds in the 1st paragraph mentioned, which was designated as No. 4, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 4, and on the said 1st day of January, 1856, the pl'ffs caused the said last-named

coupon (a copy of which is filed herewith) to be duly pre-
59 sented for payment at said North River Bank, in the city of New York, to the paying teller thereof, but payment thereof was then and there refused, there being no funds in said bank for payment thereof, and the same is still unpaid, of which presentment and non-payment the s'd Ohio and Mississippi Railroad Company then and there had notice; and at the date of said bond and when said coupon became due the statutes in the first paragraph hereof set forth were and still are in force as laws in the said State of New York.

No. 5. And the pl'ffs further state that on the 1st day of January, 1856, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds in the 1st paragraph mentioned, which was designated as No. 5, by which said city promised to pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 5, and on the day last named they caused the said coupon to be presented for payment at said North River Bank, in the city of New York, to the paying teller thereof, but payment was then and there refused, there being no funds in said bank for payment thereof, and the same is still unpaid, of which presentment and non-payment the s'd Ohio and Mississippi
Railroad Company then and there had due notice; and at the
60 date of said bond and when said said coupon became due the said statutes in the 1st paragraph mentioned are still in force as laws in the State of New York.

No. 6. And the plaintiffs further state that on the 1st day of January, 1856, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds in the 1st paragraph mentioned, which was designated as No. 6, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the first day of January, 1856, being annual interest on said bond No. 6, and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, to the paying teller thereof, but payment was then and there refused, the said city of Aurora having no funds in said bank for payment of the same, and the same is still unpaid, of which presentment and non-payment s'd Ohio and Mississippi Railroad Co. then and there had due notice; and at the date of said bond and at the time said coupon became due *the said coupon became due*, the said statutes in the 1st paragraph hereof set forth were in force as laws in the said State of New York.

No. 7. And the plaintiffs further state that on the 1st day
61 of January, 1856, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds in the 1st paragraph hereof mentioned, which was designated as No. 7, by which said city promised to pay to the bearer (the pl'ff) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being

annual interest on said bond No. 7, and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at said North River Bank in the city of New York, to the paying teller thereof, but payment was then and there refused, there being no funds in said bank for payment thereof, and the same is still unpaid, of which presentment and non-payment s'd Ohio and Mississippi Railroad Company then and there had due notice; and at the date of said bond and when said coupon became due the statutes in the first paragraph hereof set forth were and still are in force as laws of said State of New York.

No. 8. And the pl'ffs further state that on the 1st day of January, 1856, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds in the 1st paragraph mentioned, which was designated as No. 8, by which said city promised to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st
62 day of January, 1856, being annual interest on said bond No. 8; and on the day last af'd the plaintiffs cause the said coupon (a copy of which is filed herewith) to be presented for payment at the said North River Bank, in the city of New York, to the paying teller thereof, *thereof*, but payment was then and there refused, there being no funds in said bank for payment of the same, and the same still remains unpaid, of which presentment and non-payment, s'd Ohio and Mississippi Railroad Company then and there had due notice; and at the date of said bond, and *and* when said coupon became due said statutes in the first paragraph hereof set forth were and still are in force as laws in the State of New York.

No. 9. And the plaintiffs further state that on the 1st day of January, 1856, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of the said bonds in the 1st paragraph mentioned, which was designated as No. 9, by which said city promised to pay to the bearer (the pl'ff) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 8; and on the day last aforesaid the plaintiffs cause the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, to the
63 paying teller thereof, but pay't was then and there refused, there being no funds in said bank for payment thereof, and the same remains unpaid, of which presentment and non-payment the s'd Ohio and Mississippi Railroad Co. then and there had due notice; and at the date of said bond and when said coupon fell due, the said statutes (of the) in the 1st paragraph set forth were and still are in force as laws in the State of New York.

No. 10. And the pl'ffs further state that on the 1st day of January, 1856, they were and still are the owners and bearers of certain other interest coupon, made by said city of Aurora, attached to another of said bonds in the first paragraph mentioned, which was designated as No. 10, by which said city promised to pay to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on

the 1st day of January, 1856, being annual interest on said bond No. 10; and on the day last aforesaid the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, to the paying teller thereof, but payment was then and there refused, there being no funds in said bank for the payment of the same, and the same remains unpaid, of which presentment and non-payment the s'd railroad company then and there had due notice; and
64 at the date of s'd bond and when said coupon was made and fell due, the statutes in the first paragraph hereof set forth were and still are in force as laws of the State of New York.

No. 11. And the pl'ffs further state that on the 1st day of January, 1856, they were and are the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds in the first paragraph mentioned, which was designated as No. 11, by which said city promised to pay to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 11; and on the day last af's'd the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at said North River Bank, in the city of New York, to the paying teller thereof, but payment was then and there refused, there being no funds in said bank for the payment of the same, and the same still remains unpaid, of which presentment and non-payment s'd railroad co. then and there had due notice; and at the date of said bond and when s'd coupon was made and fell due the said statutes in the 1st paragraph set forth were and still are in force as laws in the said State of New York.

65 No. 12. And the plaintiffs further state that on the 1st day of January, 1856, they were and still are the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds in the 1st paragraph mentioned, which was designated as No. 12, by which said city promised to pay to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 12 and on the day last af'd; the pl'ffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, to the paying teller thereof, but payment was then and there refused, there being no funds in said bank for payment of the same, and the same still remains unpaid, of which presentment and non-payment s'd railroad company then and there had due notice; and at the date of said bond and when s'd coupon was made and fell due the said statutes in the 1st paragraph set forth, were and still are in force as laws in the State of New York.

No. 13. And the pl'ffs further state that on the 1st day of January, 1856, he was and still is the owner of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds
66 in the 1st paragraph mentioned, which was designated as No. 13, by which said city promised to pay to the bearers (the

pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the first day of January, 1856, being annual interest on said bond No. 13; and on the day last aforesaid the plaintiffs cause said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, to the paying teller thereof, but payment thereof was then and there refused, there being no funds in said bank for payment of the same, of which presentment and non-payment s'd railroad co. then and there had due notice; and at the time when said bond and coupon were executed and when s'd coupon fell due the said statutes in the 1st paragraph hereof set forth were and still are in full force as laws of the State of New York.

No. 14. And the pl'ffs further state that on the 1st day of January, 1856, they were and still are the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds in the first paragraph mentioned, which was designated as No. 14, by which said city promised to pay to the bearers (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being
67 annual interest on said bond No. 14; and on the day last af's'd the pl'ffs caused the said coupon (a copy of which is filed herewith) to be duly presented at the said North River Bank, in the city of New York, to the paying teller thereof, but payment thereof was then and there refused, there being no funds in said bank for payment of the same, and the same still remains unpaid, of which presentment and non-payment s'd railroad company then and there had due notice; and at the time said bond and coupon were executed and when s'd coupon fell due the said statutes in the 1st paragraph hereof set forth were and still in force as laws of said State of New York.

No. 15. And the pl'ffs further state that on the 1st day of January, 1856, they were and still are the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds in the 1st paragraph mentioned, which was designated as No. 15, by which said city of Aurora promised to pay to the bearer (the pl'ff) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 15; and on the day last af'd the pl'ff cause the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, to the paying
teller thereof, but payment was then and there refused, there
68 being no funds in said bank for payment of the same, and the same still remains unpaid, of which presentment and non-payment the s'd railroad co. then and there had due notice; and at the time when said bond and coupon were executed and when said coupon fell due the said statutes in the first paragraph hereof set forth were and still are in force as laws of s'd State of New York.

No. 16. And the plaintiffs further say that on the 1st day of January, 1856, they were and still are the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another

of said bonds in the 1st paragraph mentioned, which was designated as No. 16, by which said city promised to pay to the bearer (the pl'ff) sixty dollars, at the North River Bank, in the city of New York, on the said 1st day of January, 1856, being annual interest on said bond No. 16; and on the day last aforesaid the plaintiffs caused said coupon (a copy of which is herewith filed) to be duly presented for payment at said North River Bank, in said city of New York, to the paying teller thereof, but payment was then and there refused, there being no funds in said bank for payment of the same, and the same remains unpaid, of which presentment and non-payment the s'd railroad company then and there had due notice; and at the time when said bond and coupon were executed when said coupon became due
69 the said statutes in the 1st paragraph hereof set forth were and still are in force as laws in the State of New York.

No. 17. And the pl'ffs further state that on the 1st day of January, 1856, they were and still are the owners and bearers of a certain other interest coupon, made by s'd city of Aurora, attached to another of said bonds in the 1st paragraph mentioned, which was designated as No. 17, by which said city promised to pay to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 17; and on the day last af'd the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in said city of New York, to the paying teller thereof, but payment of the same was then and there refused, there being no funds in said bank for payment of the same, of which presentment and non-payment the s'd Ohio and Mississippi Railroad Company then there had due notice, and the same remains unpaid; and at the time when said bond and coupon were executed and when s'd coupon fell due the said statutes in the 1st paragraph hereof set forth were and still are in force as laws in the said State of New York.

No. 18. And the pl'ffs further state that on the 1st day of January, 1856, they were and still are the owners and bear's of a cer-
70 tain other interest coupon, made by said city of Aurora, attached to another of said bonds in the 1st paragraph mentioned, which was designated as No. 18, by which said city promised to pay to the bearer (the pl'ff) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 18; and on the day last af'd the pl'ff caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the s'd city of New York, to the paying teller thereof, but payment thereof was then and there refused, there being no funds in said bank for payment thereof, of which presentment and non-payment the said Ohio and Mississippi Railroad Company had notice then and there, and the same still remains unpaid; and at the time said bond and coupon were executed and when said coupon became due the said statutes in the 1st paragraph hereof mentioned were and still are in force as laws of the said State of New York.

No. 19. And the pl'ffs further state that on the 1st day of January, 1856, they were and still are the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds in the 1st paragraph mentioned, which was designated as No. 19, by which said city promised to pay to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New
71 York, on the 1st day of January, 1856, being annual interest on said bond No. 19; and on the day last af'd the pl'ffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at said North River Bank, in the city of New York, to the paying teller thereof, but payment of the same was then and there refused, there being no funds in said bank for payment of the same, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and the same still remains unpaid; and at the time said bond and coupon were executed and when said coupon fell due the said statutes in the 1st paragraph mentioned were and still are in force as laws of the said State of New York.

No. 20. And the pl'ffs further say that on the 1st day of January, 1856, they were and still are the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds in the 1st paragraph mentioned, designated as No. 20, by which said city promised to pay the bearer (the pl'ff) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 20; and on the day last af'd the pl'ffs caused the said coupon (a copy of which is herewith filed) to be duly presented for payment in the said Canal Bank, in the city of New York, to the paying teller thereof, but
72 payment of the same was then and there refused, there being no funds in said bank for payment thereof, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and the same still remains unpaid; and at the time the said bond and coupon were executed and when said coupon fell due the said statutes in the 1st paragraph set forth were and still are in force as laws of the said State of New York.

No. 21. And the pl'ffs further state that on the 1st day of January, 1856, they were and still are the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph mentioned, and numbered 21, by which said city promised to pay to bearer (the pl'ff) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 21; and on the day last af'd the plaintiffs caused the said coupon to be duly presented for payment in the said North River Bank in the city of New York to the paying teller thereof, but payment was then and there refused, there being no funds in said bank for payment of the same, of which presentment and non-payment the said Ohio and Mississippi Railroad Company had then and there due notice, and the same remains unpaid; and at the time said bond and coupon were executed and when

73 said coupon fell due the said statutes in the 1st paragraph set forth were and still are in force as laws of the State of New York.

No 22. And the pl'ffs further state that on the 1st day of January, 1856, they were and still are the owner and bearer of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph alleged, and numbered 22, by which said city promised to pay to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 22; and on the day last af'd the plaintiff caused said coupon (a copy of which is filed herewith) to be duly presented for payment at said North River Bank, in the city of New York, to the paying teller thereof, but payment of the same was then and there refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and the same still remain unpaid; and at the time said bond and coupon were executed, and when said coupon fell due, the said statutes in the 1st paragraph set forth were and still are in force as laws of the said State of New York.

No. 23. And the pl'ffs further state that on the 1st day of January, 1856, they were and still are the owner and bearer of a certain other interest coupon, made by said city of Aurora, attached
74 to another of said bonds issued as in the 1st paragraph alleged, and numbered 23, by which said city promised to pay to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 23; and on the said 1st day of January, 1856, the pl'ffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, to the paying teller thereof, but payment of the same was then and there refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice; and said coupon in still unpaid; and the said statutes in the 1st paragraph set forth were, at the date of said bond and coupon and when said coupon fell due, in force as laws of the said State of New York.

No. 24. And the pl'ffs further state that on the 1st day of January, 1856, they were and still are the owner and bearer of a certain other interest coupon, made by the said city of New York, attached to another of said bonds issued as in the 1st paragraph hereof alleged, and numbered 24, by which said city promised to pay to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 24; and on the said 1st day of January, 1856, the pl'ffs caused the said coupon (a copy of which is filed here-
75 with) to be duly presented for payment in the said North River Bank, to the paying teller thereof, but payment of the same was then and there refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad

Company then and there had due notice, and the same still remains unpaid ; and the statutes in the 1st paragraph set forth were, when s'd bond and coupon were executed and when said coupon fell due, in force as laws of the State of New York.

No. 25. And the plaintiffs further state that on the 1st day of January, 1856, they were the owners and bearers, and still are, of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph hereof alleged, and numbered 25, by which said city promised to pay to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 25 ; and on the said 1st day of January, 1856, the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, to the paying teller thereof, but payment of the same was then and there refused for the want of funds, of which presentment and non-payment the said the Ohio and Mississippi Railroad Company then and there had due notice, and the same remains unpaid ; and at the time the said bond and coupon were executed and when said coupon fell due the said statutes in the 1st paragraph set forth were and still are in force as laws of the State of New York.

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No. 26. And the plaintiffs further state that on the 1st day of January, 1856, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in the first paragraph hereof alleged, and numbered 26, by which said city promised to pay to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 26; and on the day last af's'd the pl'ffs cause the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, but payment of the same was then and there refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and said coupon is still unpaid ; and the said statutes in the first paragraph set forth were, at the date of said bond and s'd coupon, and when said coupon fell due, in force as laws of the said State of New York.

No. 27. And the plaintiffs further state that on the 1st day of January, 1856, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph alleged, and numbered 27, by which said city promised to pay to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 27 ; and on the day last named the pl'ffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in and at the said North River Bank, and paym't thereof was then and there duly demanded, but payment was refused for want of funds, of which presentment and non-payment the said Ohio and Mis-

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sissippi Railroad Company then and there due notice, and said coupon remains unpaid; and the said statutes in the first paragraph set forth were, at the time said bond and coupon were executed and when said coupon fell due, in force as laws of the State of New York.

No. 28. And the plaintiffs further state that on the 1st day of January, 1856, they were the owners and bearer of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph alleged, and numbered 28, by which said city promised to pay to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 28; and on the said 1st day of January, 1856, the plaintiff caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, and payment
78 thereof was then and there duly demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and said coupon is still unpaid; and the said statutes in the first paragraph hereof set forth were, at the execution of said bond and coupon and when said coupon fell due, in force as laws of the said State of New York.

No. 29. And the pl'ffs further state that on the 1st day of January, 1856, they were the owner and bearer of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph alleged, and numbered 29, by which said city promised to pay to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 29; and on said 1st day of January, 1856, the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, and payment thereof was then and there demanded, but refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and said coupon is still unpaid. And said statutes in the 1st paragraph hereof set forth were, at the time said bond and coupon were executed and when said coupon fell due, and still are, in force as laws of the State of New York.

79 No. 30. And the pl'ffs further state that on the 1st day of January, 1856, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph alleged, and numbered 30, by which said city promised to pay to the bearers (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 30; and on said last-named day the plaintiffs caused said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, and payment thereof was then and there duly demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad

Company then and there had due notice, and said coupon is still unpaid; and at the date of s'd bond and coupon, and when said coupon fell due the statutes in the 1st paragraph set forth were and still are in force as laws of the State of New York.

No. 31. And the pl'ffs further state that on the 1st day of January, 1856, they were the owner and bearer of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph hereof alleged, and numbered 31, by which said city promised to pay to the bearer (the pl'ff) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said
90 bond No. 31, and on the said last-named day the pl'ffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, and payment thereof was then and there duly demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and said coupon is still unpaid; and at the date of said bond and when said coupon full due the statutes in the first paragraph set forth were and still are in force as the laws of said State of New York.

No. 32. And the pl'ffs further state that on the 1st day of January, 1856, they were the owners and bearer of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph alleged, and numbered 32, by which said city promised to pay to the bearer (the pl'ff) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 32; said last-named day the pl'ff caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment was then and there duly demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and said coupon
91 is still unpaid; and at the date of said bond and coupon and when said coupon fell due the said statutes in the first paragraph set forth were and still are in force as laws of the State of New York.

No. 33. And the plaintiffs further state that on the 1st day of January, 1856, they were the owner and bearer of another interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph hereof alleged, and numbered 33, by which said city promised to pay to the bearer (the pl'ff) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 33; and on the day last named the plaintiff caused said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment of the same was then and there duly demanded, but was refused for want of

funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and the same still remains unpaid; and the said statutes in the 1st paragraph set forth were when s'd bond and coupon were executed and when said coupon fell due in force as laws of the s'd State of New York.

No. 34. And the pl'ffs further state that on the 1st day of January, 1856, they were the owners and bearers of a certain other
92 interest coupon, made by said city of Aurora, attached to another of said bonds, issued as in the 1st paragraph alleged, and numbered 34, by which said city promised to pay to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond 34; and on the day last named the plaintiffs caused said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, at the city of New York, on the 1st day of January, 1856, and payment thereof was then and there duly demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and the same still remains unpaid; and the said statutes in the 1st paragraph set forth when s'd bond and coupon were executed and when said coupon fell due were and still are in force as laws of s'd State of New York.

No. 35. And the pl'ff further states that on the 1st day of January, 1856, they were and still are the owner and bearer of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph alleged, and numbered 35, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No.
93 35, and on the day last named the plaintiff caused said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and the same still remains unpaid; and the said statutes in the first paragraph set forth were, when said bond and coupon were executed and when said coupon fell due, in force as laws of the State of New York.

No. 36. And the plaintiff further states that on the 1st day of January, 1856, they were the holder and bearer, and still are, of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph alleged, and numbered 36, by which said city promised to pay to the bearer (the pl'ffs) sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 36; and on the day last named the plaintiff caused said coupon (a copy of which is filed herewith) to be duly presented for payment at said North River Bank, in said city of New York, and

Memorandum for Conference

Tucker & Attn Genl desire allotment of Judge to La Circuit.

Issued WSP

payment of the same was then and there duly demanded, but
94 was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and the same still remains unpaid; and said statutes in the 1st paragraph set forth were, when said bond and coupon were executed and when said coupon fell due, and still are, in force as laws of the said State of New York.

No. 37. And the pl'ff further states that on the 1st day of January, 1856, they were and still are the owner and bearer of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph alleged, and numbered 37, by which said city promised to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 37; and on the day last af'd the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in said city of New York, and payment of the same was then and there duly demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and the same still remains unpaid; and the said statutes in the 1st paragraph set forth, at the time s'd bond and coupon were executed and when said coupon fell due, were, and still are, in force as laws of the State of New York.

95 No. 39. And the pl'ff further states that on the 1st day of January, 1856, they were and still are the owner and bearer of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph alleged, and numbered 39, by which the said city of Aurora promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annunl interest on said bond No. 39; and on the day last aforesaid the pl'ff caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company had due notice then and there, and the same remains unpaid; and at the time said bond and coupon were executed and when s'd coupon became due the said statutes in the 1st paragraph set forth were, and still are, in *in* force as laws of the said State of New York.

No. 40. And the pl'ff further state that on the 1st day of January, 1856, they were and still are the owner and bearer of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph alleged, and
96 numbered 40, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 40; and on the day last named the

No. 41. And the pl'ffs further state that on the 1st day of January, 1856, they were the owners and bearers of another interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph alleged, and numbered 41, by which said city promised to pay to the bearer thereof sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856; and on the day last named the pl'ff caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, and payment of the same was then and there duly demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Rail then and had due notice, and said coupon remains unpaid; and the said statutes in the 1st paragraph set forth were, when s'd bond and coupon were executed and when s'd coupon fell due, and still are in full force as laws of the State of New York.

No. 42. And the pl'ffs further state that on the 1st day of January, 1856, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another
97 of said bonds issued as in the 1st paragraph alleged, and numbered 42, by which said city promised to pay to the bearer thereof sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 42; and on the day last named the plaintiff caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at said North River Bank, in s'd city of New York, and payment thereof was then and there duly demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and s'd coupon is still unpaid; and at the time said bond and coupon were made and when s'd coupon fell due the s'd statutes in the 1st paragraph set forth was and still are in force as laws of the said State of New York.

No. 43. And the plaintiffs further state that on the 1st day of January, 1856, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph alleged, and numbered 43, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856; and on the day last named the plaintiff caused the said coupon (a copy of which is filed herewith) to be duly presented for
payment in s'd North *North* River Bank, and payment of the
98 same was then and there demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and said coupon is still unpaid; and when s'd coupon and bond were executed and when s'd coupon fell due the said statutes in the 1st paragraph set forth were and still are in force as a law of the State of New York.

No. 44. And the pl'ffs further state that on the 1st day of Janu-

ary, 1856, they were and still are the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph alleged, and numbered 44, by which said city of Aurora promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 44; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in and at the said North River Bank, in the said city of New York, for payment, and payment thereof was then and there duly demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company had then and there due notice, and said coupon is still unpaid; and

99 at the time s'd bond and coupon were executed and when s'd coupon fell due the said statutes in the 1st paragraph set forth were and still are in force as laws of the said State of New York.

No. 45. And the pl'ffs further state that on the 1st day of January, 1856, they were and are the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of the bonds issued by her as in the 1st paragraph alleged, and numbered 45, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 45; and on the day last named the pl'ffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company had due notice then and there, and s'd coupon is still unpaid; and at the time said bond and coupon were executed and when said coupon fell due the said statutes of the State of New York, in the 1st paragraph set forth, were and still are in force as laws of the State of New York.

No. 46. And the pl'ffs further state that on the 1st day of January, 1856, they were and still are the owners and bearers of a

100 certain other interest coupon, made by said city of Aurora, attached to another of the bonds issued as in the 1st paragraph alleged, numbered 46, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 46; and on the day last named the pl'ffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in and at the said North River Bank, in the city of New York, and payment was then and there duly demanded, of which presentment and non-payment the said Ohio and Mississippi Railroad Company had due notice then and there, and said coupon remains unpaid, and when said bond and coupon were executed and when said coupon fell due the said statutes in the 1st paragraph set forth were and still are in force as laws of the said State of New York.

No. 47. And the plaintiffs further state that on the 1st day of January, 1856, they were and still are the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph alleged, and numbered 47, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No.
101 47; and on the day last named the plaintiff caused said coupon (a copy of which is filed herewith) to be duly presented for payment in and at s'd North River Bank, in the city of New York, and payment thereof was then and there demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and the s'd coupon remains unpaid; and when s'd bond and coupon were executed and when s'd coupon fell due the said statutes in the 1st paragraph set forth were and still are in force as laws of the said State of New York.

No. 48. And the pl'ff further state that on the 1st day of January, 1856, they were and still are the owner and bearer of a certain other interest coupon, made by said city of Aurora, attached to another of the bonds issued as in the first count alleged, and numbered 48, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 48; and on said last-named day the pl'ff caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in and at the said North River Bank, in s'd city of New York, and payment there-
102 of was then and there duly demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and said coupon is still unpaid; and when said bond and coupon were executed and when said coupon fell due the said statutes of New York in the 1st paragraph set forth were and still are in force as laws of the s'd State of New York.

No. 49. And the plaintiffs further state that on the first day of January, 1856, they were and still are the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph alleged, numbered 49, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 49; and on the said 1st day of January, 1856, the pl'ff caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in and at said North River Bank, in the city of New York, and payment thereof was then and there demanded, but was refused for want of funds, of which presentment and non-payment the said Ohio and Mississippi Railroad Company then and there had due notice, and said coupon remains unpaid; and when said bond and
103 coupon were executed and when said coupon fell due the said

statutes in the 1st paragraph set forth were and still are in force as laws of the s'd State of New York.

No. 50. And the pl'ffs further state that on the 1st day of January, 1856, they were and still are the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of the bonds issued as in the 1st paragraph stated, and numbered 50, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on said bond No. 50; and on the day last named the pl'ff caused the said coupon to be presented for payment in and at said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was refused for want of funds, of which presentment and non-payment the s'd Ohio and Mississippi Railroad Company then and there had due notice, and said coupon still remains unpaid; and when said bond and coupon were executed and fell due the said statutes in the first paragraph set forth were and still are in force as laws of the said State of New York.

Wherefore, not waiving their right to hold s'd railroad com-
104 pany liable in an action hereafter on any guaranty of s'd bonds which it may have made, the pl'ffs make the said the Ohio and Mississippi Railroad Company a defendant hereto, only to answer as to its assignment of s'd bonds and coupons to the pl'ff, and its interest, if any, in the subject of this action, and they demand judgment against the said city of Aurora for $4,000, the amount of said several coupons so unpaid, with interest and costs of protest as af's'd, and ask for all other proper relief against said city of Aurora.

SPOONER & BROWER, *for Pl'ffs.*

Here follows copy of bond numbered 1:

No. 1. UNITED STATES OF AMERICA. No. 1.

State of Indiana. City of Aurora.

$1,000. Ohio and Mississippi Railroad Company. $1,000.

The city of Aurora acknowledges itself indebted to the Ohio and Mississippi Railroad Company, or bearer, in the sum of one thousand dollars, negotiable and payable at the North River Bank, in the city of New York, twenty-five years from the date hereof, upon the pre-
sentation and delivery of this certificate, bearing an interest of
105 six per cent. per annum, payable annually on the first day of January, at said bank, in the city of New York, upon presentation and delivery of the proper coupon hereto attached, signed by the clerk of said city, and at all times the holders shall have a lien on the stock of said city in said company, for which they received in payment and may exchange the same for a like amount of said stock at any time before the first declaration of cash dividends, and be substituted as stockholder in place of said city, upon surrender of this bond. This bond is issued in part payment of a subscription of fifty thousand dollars by the said city of Aurora to the capital stock of the

Ohio and Mississippi Railroad Company, by order of the common council of the city of Aurora, on the 28th September, 1850, in pursuance of the eighteenth section of an act granting to citizens of the town of Aurora, in the county of Dearborn, a city charter, passed by the general assembly of the State of Indiana, and approved February 14, 1848.

Witness the seal of the said city of Aurora, and the signatures of the mayor and clerk of said city, this first day of January, 1852.

SOLOMON P. TUMY,
Mayor of the city of Aurora.

WILL. W. CONWAY,
Clerk of the city of Aurora.

106 *Copies of the several coupons referred to in complaint in paragraph .*

No. 1.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 1.

$60. WILL. W. CONWAY, *Clerk.*

107 No. 2.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 2.

$60. WILL. W. CONWAY, *Clerk.*

No. 3.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 3.

$60. WILL. W. CONWAY, *Clerk.*

No. 4.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 4.

$60. WILL. W. CONWAY, *Clerk.*

No. 5.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 5.

$60. WILL. W. CONWAY, *Clerk.*

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No. 6.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 6.

$60. WILL. W. CONWAY, *Clerk.*

No. 7.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 7.

$60. WILL. W. CONWAY, *Clerk.*

No. 8.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 8.

$60. WILL. W. CONWAY, *Clerk.*

No. 9.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 9.

$60. WILL. W. CONWAY, *Clerk.*

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No. 10.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 10.

$60. WILL. W. CONWAY, *Clerk.*

No. 11.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 11.

$60. WILL. W. CONWAY, *Clerk.*

No. 12.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 12.

$60. WILL. W. CONWAY, *Clerk.*

No. 13.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 13.

110 No. 14.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 14.

$60. WILL. W. CONWAY, *Clerk.*

No. 15.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 15.

$60. WILL. W. CONWAY, *Clerk.*

No. 16.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 16.

$60. WILL. W. CONWAY, *Clerk.*

No. 17.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 17.

$60. WILL. W. CONWAY, *Clerk.*

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No. 18.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 18.

$60. WILL. W. CONWAY, *Clerk.*

No. 19.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 19.

$60. WILL. W. CONWAY, *Clerk.*

No. 20.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 20.

$60. WILL. W. CONWAY, *Clerk.*

No. 21.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 21.

$60. WILL. W. CONWAY, *Clerk.*

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No. 22.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 22.

$60. WILL. H. CONWAY, *Clerk.*

No. 23.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 23.

No. 24.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of Janurry, 1856, being annual interest on bond No. 24.

$60. W. W. CONWAY, *Clerk.*

No. 25.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 25.

$60. WILL. W. CONWAY, *Clerk.*

113 No. 26.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 26.

$60. WILL. W. CONWAY, *Clerk.*

No. 27.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 27.

$60. WILL. W. CONWAY, *Clerk.*

No. 28.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 28.

$60. WILL. W. CONWAY, *Clerk.*

No. 29.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 29.

$60. WILL. W. CONWAY, *Clerk.*

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No. 30.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 30.

$60. WILL. W. CONWAY, *Clerk.*

No. 31.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 31.

$60. WILL. W. CONWAY, *Clerk.*

No. 32.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 32.

No. 33.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New Nork, on the 1st day of January, 1856, being annual interest on bond No. 33.

115

No. 34.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 34.

$60. WILL. W. CONWAY, *Clerk.*

No. 35.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 35.

$60. WILL. W. CONWAY, *Clerk.*

No. 36.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 36.

No. 37.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 37.

$60. WILL. W. CONWAY, *Clerk.*

116 No. 37.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 37.

$60. WILL. W. CONWAY, *Clerk.*

No. 38.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 38.

$60. WILL. W. CONWAY, *Clerk.*

No. 39.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 39.

$60. WILL. W. CONWAY, *Clerk.*

No. 40.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 49.

$60. WILL. W. CONWAY, *Clerk.*

117 No. 41.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on 1st day of January, 1856, being annual interest on bond No. 41.

$60. WILL. W. CONWAY, *Clerk.*

No. 42.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 42.

$60. WILL. W. CONWAY, *Clerk.*

No. 43.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 43.

$60. WILL. W. CONWAY, *Clerk.*

No. 44.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 44.

$60. WILL. W. CONWAY, *Clerk.*

No. 45.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 45.

$60. WILL W. CONWAY, *Clerk.*

118 No. 46.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 46.

$60. WILL. W. CONWAY, *Clerk.*

No. 47.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 47.

$60. WILL. W. CONWAY, *Clerk.*

No. 48.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 48.

$60. WILL. W. CONWAY, *Clerk.*

No. 49.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 49.

$60. WILL. W. CONWAY, *Clerk.*

No. 50.

Ohio and Mississippi R. road subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1856, being annual interest on bond No. 50.

$60. WILL. W. CONWAY, *Clerk.*

119 And afterwards, to wit, on the 7th day of May, 1856, being the third judicial day of the May term of said court, in the year of our Lord one thousand eight hundred and fifty-six, the following proceedings were had in said cause, to wit:

CHARLES W. WEST and ANOTHER
v.
THE CITY OF AURORA and THE OHIO AND Mississippi Railroad Company. } Civil action, No. 161.

Now come the plaintiffs, by their attorneys, and on motion the city

of Aurora is ruled to answer the complaint herein by the next calling of this cause.

And afterwards, to wit, on the 17th day of May, 1856, being the twelfth judicial day of the May term of said court, in the year aforesaid, the following proceedings were had in said cause, to wit:

CHARLES W. WEST and JOSEPH TORRENCE
v.
THE CITY OF AURORA and THE OHIO AND Mississippi Railroad Company. } Civil action, No. 161.

Comes the plaintiffs, and the said railroad company files its answer herein, to wit:

State of Indiana, Dearborn county circuit court.

CHARLES W. WEST *et al.*
120 *v.*
THE CITY OF AURORA and THE OHIO AND Miss. R. R. Co.

The answer of the defendants above named, the Ohio and Miss. Railroad Company.

The defendants above named, the Ohio and Miss. Railroad Company, for answer to the complaint of the plaintiffs, say that they admit it to be true that the city of Aurora subscribed for fifty thousand dollars of the capital stock of these defendants, and made, sold, and delivered to these defendants fifty of the bonds of the said city of Aurora, for the sum of one thousand dollars, as described in the complaint, with coupons attached; and that they, these defendants, afterwards sold and transferred the said bonds of the city of Aurora to the plaintiffs; and that having so transferred the said bonds to the plaintiffs, they, these defendants, have no further interest in the matters in controversy in this suit, as alleged in the complaint.

O. & M. R. R. Co.,
By WM. GLENN, *Pres't.*
COFFIN & MITCHELL,
Deft's Att'ys.

And the said city of Aurora files a demurrer to the plantiffs' complaint, to wit:

In the Dearborn circuit court, May term, 1856.

CHARLES W. WEST and JOSEPH F. TORRENCE
v.
THE CITY OF AURORA and THE PRESIDENT AND directors of the Ohio and Mississippi Railroad Company. } Civil action.

121 Now comes said city of Aurora, by her attorneys, and de-

murs to the said plaintiffs' complaint for the following grounds of objection, to wit:

1st. Because the said complaint does not state facts sufficient to constitute a cause of action.

2d. Because the said defendants are improperly joined in said action.

HOLMAN & HAYNES,
Attorneys for the City of Aurora.

Which demurrer the court having heard overruled, to which overruling of said demurrer the said city of Aurora objects and excepts.

And thereupon the said city of Aurora files its answer in two paragraphs, to wit:

In the Dearborn circuit court, May term, 1856.

CHARLES W. WEST and JOSEPH F. TORRENCE
v.
THE CITY OF AURORA and THE OHIO AND Mississippi Railroad Company.

Now comes the said city of Aurora, by her attorneys, and for answer to said complaint says:

1st. That the said Ohio and Mississippi Railroad Company was not chartered to construct, and was not on day of September, 1850, at the time when said subscription for the said fifty thousand dollars of the capital stock of said company was made, constructing a railroad to said city of Aurora, but said company was incorporated by
122 An act of the general assembly of the State of Indiana, entitled "An act to incorporate the Ohio and Mississippi Railroad Company," which act took effect on the 14 day of February, 1848; that said company was, by virtue of the 13th section of said act, authorized to survey, locate, and construct a railroad on the most direct and practicable route, between Lawrenceburgh, on the Ohio river, and Vincennes, on the Wabash river, having in view the interests of the company and the convenience of the citizens of the State of Indiana, and to extend eastwardly, on the like most direct and practicable route, to the city of Cincinnati, in the State of Ohio, and to extend westward, on the like most direct and practicable route, through the State of Illinois, to the city of St. Louis, in the State of Missouri; that the said company was not authorized to construct, and never has since the incorporation thereof hitherto engaged in, proposed, commenced the construction of any road whatever, except the railroad contemplated by the said 13th section of said act of incorporation; that at the time said subscription was made as aforesaid, the said company had not located their said road between the points designated in said 13th section, but afterwards, to wit, on the day of , 1852, the said company, in determining the route of said road between the said city of Cincinnati, in the State of Ohio, and

the city of St. Louis, in the State of Missouri, located the same
123 through the said city of Aurora, since which time the said company has been engaged in the construction of said railroad as located as aforesaid, and no other road whatever.

And said defendant further says that said subscription was made for capital stock of said company, and said bonds and coupons were issued in payment of said subscription and accruing interest thereon, and for no other purpose whatever. Wherefore the city of Aurora, defendant aforesaid, says that the said company was not chartered to construct, and were not at the time of said subscription engaged in the construction of *of* a railroad to said city of Aurora, within the meaning of the 18th section of the act incorporating said city, and said subscription, and the bonds and coupons issued thereon, were therefore unauthorized and void.

2d. That the Ohio and Mississippi Railroad Company was not chartered to construct, and were not, on the day of September, 1850, at the time when said subscription was made, constructing a railroad to the city of Aurora.

HOLMAN & HAYNES,
Att'ys for the City of Aurora.

And the plaintiffs filed a demurrer to the first paragraph of said answer; which demurrer reads as follows, to wit:

124 In the Dearborn circuit court, May T., 1856.

CHARLES W. WEST and JOSEPH TORRENCE
v.
THE CITY OF AURORA and THE OHIO AND Mississippi Railroad Company.

The plaintiffs demur to the 1st paragraph of the defendants' answer herein, and say that the same is not sufficient in law to bar the pl'ff's action.

SPOONER & BROWER.

Which demurrer the court sustained; to which decision, sustaining said demurrer, the said city of Aurora objected and excepted, and declines answering over, and the said plaintiffs file a reply to the 2d paragraph of said aaswer, to wit:

In the Dearborn circuit court, May T., 1856.

CHARLES W. WEST and JOSEPH TORRENCE
v.
THE CITY OF AURORA and THE OHIO AND Mississippi Railroad Company.

The plaintiffs reply to the 2d paragraph of the defendants' answer, and say that the said Ohio and Mississippi Railroad Company was chartered by an act of the general assembly of this State, entitled "An act to incorporate the Ohio and Mississippi Railroad Company," which

took effect on the 14 of February, 1848, and by virtue thereof
125 has constructed and finished a railroad from Seymour, in the county of Jackson, in this State, to the said city of Aurora, and thence to the mouth of the Great Miami river; and is now engaged in extending said road from Seymour westward to Vincennes, having also finished said railroad from the said Miami river to, the city of Cincinnati, and the said bond in complaint referred to, with the coupon attached, were issued and delivered to the said Ohio and Mississippi Railroad Company by the said city of Aurora, after the said railroad had been surveyed and located at and where the same has since been constructed, and for the purpose in the complaint alleged.

SPOONER & BROWER.

To which reply the said city of Aurora filed a demurrer, to wit:

CHARLES W. WEST and JOSEPH TORRENCE
vs.
THE CITY OF AURORA and THE OHIO AND Mississippi Railroad Company. } Civil action.

Now comes the city of Aurora, defendant aforesaid, by her solicitor, and demurs to the reply of the said plaintiffs to the second paragraph of the answer of the city of Aurora to said complaint, and for ground of objection to said reply says that the said reply does
126 not set forth facts sufficient to enable said plaintiffs to maintain their action, and is not in law a sufficient reply to the said second paragraph of defendants' answer.

HOLMAN & HAYNES,
Att'ys for the City of Aurora.

And the court having heard the same overrule the said demurrer, to which overruling of said demurrer said city of Aurora objects and excepts; and the said city not desiring to controvert the facts stated in said reply, but admitting the same and that the amount of the said bonds and coupons is the sum in the complaint stated, it is therefore considered by the court that the plaintiffs recover of the said city of Aurora the sum of three thousand and ninety-six dollars, being the amount of the several coupons in the complaint mentioned, together with their costs expended. And the city of Aurora prays an appeal from the judgment aforesaid to the supreme court of the State of Indiana, which is granted on the said city of Aurora executing and filing bond, payable to the plaintiffs, in the penalty of five thousand dollars, with John Cobb as security, within sixty days from this date.

STATE OF INDIANA, *Dearborn county, sct:*

I, John F. Cheek, clerk of the Dearborn circuit court, do hereby certify that the above and foregoing contains a full, true, and
127 complete transcript of the proceedings and judgment of the court in said cause as fully as the same remains of record in said court.

In witness whereof, I have hereunto subscribed my name and affix the seal of said court, at Lawrenceburgh, this 15th day of May, 1865.

[SEAL.] JOHN F. CHEEK, *Clerk.*

Here follows the record of the proceedings and judgment of the circuit court of the United States for the district of Indiana in the cause entitled Charles W. West and Joseph Torrence *v.* The City of Aurora, a corporation by virtue of the laws of the State of Indiana, above by said plaintiff in his replication pleaded, in these words and figures, to wit:

128 1. Pleas of the circuit court of the United States for the seventh judicial circuit and district of Indiana, begun, continued, and holden at Indianapolis, in said district of Indiana, on the 1st day of June, in the year of our Lord eighteen hundred and fifty-seven, that being the 13th judicial day of the May term for said year. Present, the honorable John McLean, judge of said circuit, and the honorable Elisha M. Huntington, judge of said district.

CHARLES W. WEST and JOSEPH TORRENCE
vs.
CITY OF AURORA, a corporation by virtue of the laws of the State of Indiana. } Assumpsit.

Be it remembered that heretofore, to wit, on the twenty-third day of February, in the year of our Lord eighteen hundred and fifty-seven, the plaintiffs, by their attorney, N. C. McLean, esq., filed in the clerk's office of the said court their certain præcipe in the words following, to wit:

Charles W. West and Joseph Torrence, citizens and residents
129 of the State of Ohio, partners under the name and firm of C. W. West & Co., against the city of Aurora, a corporation by virtue of the laws of the State of Indiana, and a resident and citizen thereof. Damages $10,000.

Issue a summons, returnable according to law; indorse, suit brought on fifty coupons or interest warrants, for the sum of sixty dollars each, issued by defendant for value received, all payable at the North River Bank, in the city of New York, on the first day of January, 1857; all of said coupons or interest warrants were issued on Ohio and Mississippi railroad subscription and signed by Will. W. Conway, city clerk, by order of and for the benefit of the defendant, and are now due and owing to plaintiffs; also for goods bargained and sold, goods sold and delivered, money had and received, money lent, money paid, ac. stated, &c., &c.

February 10th, 1857.

N. C. McLEAN,
SPOONER & BROWER,
Att'ys for Pl'ff.

To the CLERK OF THE CIRCUIT COURT
of the U. S. for the district of Indiana:

And thereupon, to wit, on the day and year last aforesaid,
130 to wit, on the twenty-third day of February, in the year eigh-

teen hundred and fifty seven, there was issued from the clerk's office a summons in due form of law, in the words following, to wit:

The President of the United States of America to the marshal of the district of Indiana, greeting:

You are hereby commanded to summon the city of Aurora, a corporation by virtue of laws of the State of Indiana, and a resident and citizen thereof, if she may be found in your district, to be and appear before the circuit court of the United States for the district of Indiana, to be holden before the judges thereof, at Indianapolis, in said district, on the third Monday in May next, to answer unto Charles W. West and Joseph Torrence, citizens of the State of Ohio, in a plea of assumpsit. Damages ten thousand dollars ($10,000.)

And have you then and there this writ.

Witness honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the district of Indiana, hereunto affixed, at Indianapolis, this 23d day of February, in the year of our Lord one thousand eight hundred and fifty-seven.

131 [SEAL.] H. BASSETT, *Clerk.*

And upon which summons was indorsed the following, to wit:

Suit brought on fifty coupons or interest warrants, for the sum of sixty dollars each, issued by defendants for value received, all payable at the North River Bank, in the city of New York, on the 1st day of January, 1857. All of said coupons or interest warrants were issued on Ohio and Mississippi railroad subscription, and signed by Will. W. Conway, city clerk, by order of, and for the benefit of the defendant, and are now due and owing to plaintiffs.

Also for goods bargained and sold, goods sold and delivered, money had and received, money lent, money paid, account stated, &c., &c.; and which summons was duly delivered to the marshal of the said district of Indiana, and by him served and returned with the following indorsement thereon, to wit:

Served as within commanded by copies delivered to Washington Stark, the city mayor, Major R. Staberthe, city clerk, and Stephen Green, the city treasurer, on the 5th day of March, A. D. 1857.

JOHN L. ROBINSON,
U. S. Marshal, District of Indiana,
Pr. JESSE D. CARMICHAEL, *Deputy.*

Service and copy on 3	$9 00
Expense to same	22 25
Return	10
	31 35

132 And upon the same day and year as aforesaid, to wit, the 23d day of February, 1857, the plaintiffs file their certain declaration in the words following, to wit:

Charles W. West and Joseph Torrence, citizens and residents of the State of Ohio, partners under the name and firm of C. W. West & Co., *vs.* the City of Aurora, a corporation by virtue of the laws of the State of Indiana, and a citizen and resident thereof.

Circuit court of the United States for the district of Indiana, May term, 1857.

Charles W. West and Joseph Torrence, citizens and residents of the State of Ohio, partners under the name and firm of C. W. West & Co., complain of the city of Aurora, a corporation by virtue of the laws of the State of Indiana, and a citizen and resident thereof, on a plea of assumpsit for that whereas the said defendant, by virtue of the power conferred by an act of the general assembly of the State of Indiana, entitled "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter," approved February 14th, 1848, did lawfully and due form, and for a valuable consideration, execute and issue fifty bonds, under the seal of said corporation, and the signature of the mayor and clerk thereof, and bearing date the 1st day of January, 1852, whereby the defendant acknowledged indebtedness to the Ohio and Mississippi Rail-
133 road Company, or bearer, in the sum of one thousand dollars in each of said fifty bonds, negotiable and payable at the North River Bank, in the city of New York, twenty-five years from the date thereof, upon the presentation and delivery of said bonds, bearing an interest of six per cent. per annum, payable annually on the first day of January, at said bank, in the city of New York, upon the presentation and delivery of the proper coupons thereto attached, signed by the clerk of said city, the defendants; and whereas the plaintiffs, for a valuable consideration, have become the legal holders, owners, and bearers of said fifty bonds and the coupons thereto attached, and the defendants having failed to pay the annual instalment of interest due upon said bonds, as they promised to do to plaintiffs, the legal holders, owners, and bearers thereof, and as called for by the proper coupons thereto attached, a right of action hath accrued to the plaintiff, against the defendants thereupon, which said coupons, being fifty in number, and all of the following tenor and effect, with the exception that each coupon is numbered differently, and bears the same number as the bond to which it belongs, viz:

Ohio and Mississippi Railroad subscription, $50,000.

134 City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st of January, 1857, being annual interest on bond No. 1.

$60. WILL. W. CONWAY, *City Clerk.*

By which said fifty coupons, for the sum of sixty dollars each, the defendants, in consideration of the premises, promised to pay the

plaintiffs, the legal owners and bearers thereof, the sum of three thousand dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1857, which said term has elapsed, and the defendant, wholly regardless of the promise made as aforesaid, has failed to pay said sum of money or any part thereof, at the time or place promised as aforesaid, according to the tenor and effect of said 50 coupons, or at any other time and place.

And whereas the defendants afterwards, on the third day of February, 1857, in consideration of the premises, then and there promised to pay the said several sums of money to the plaintiffs on request; yet the defendant hath disregarded the promises so made, and hath not paid the said several sums of money, nor either of them, nor any part thereof, to the damage of the plaintiff ten thousand dollars; and therefore they bring suit.

B. U. McLEAN and SPENCER P. BROWN,
135 *Att'ys for Pl'ffs.*

And afterwards, to wit, at a circuit court of the United States for the seventh judicial circuit and district of Indiana, begun, continued, and holden at Indianapolis, in said district of Indiana, on the 18th day of May, in the year of our Lord 1857, that being the 1st judicial day of said May term for the year 1857: present the said judge aforesaid.

Come now the plaintiffs by their attorneys, and upon their motion the defendant is ruled to plead at the calling of this cause on to-morrow morning, and time is given.

And afterwards, to wit, on the 25th day of May, of the year aforesaid, at the said court aforesaid, before the said judge aforesaid, the said defendants come and file the following plea, to wit: that the plaintiffs ought not to have their action against her, because, she says, that the declaration aforesaid, as to the first count thereof, and the matters and things therein contained, are not sufficient in law to maintain the action aforesaid, and that she is not bound in law to answer the same. Therefore she prays judgment, and that the said plaintiffs be barred of their said action against her.

By DUMONS, TORBERT & HOLMAN, *Att'ys.*

136 And, for causes of demurrer, the defendant shows the following:

1st. That the said declaration does not show that the said bonds were issued in pursuance of a vote taken of the inhabitants of said city.

2d. That the said plaintiffs set forth more than one cause of action in their 1st count. Wherefore the said count is double in this, that each separate coupon is a distinct cause of action.

3d. That the plaintiffs made no property of the bonds sued on.

4th. That an action of assumpsit cannot be maintained on a bond, and for other good and sufficient causes, &c., &c.

The plaintiffs now come and join in demurrer, in these words, and say that the matters and things set forth in the said declaration are sufficient in law, &c., &c.

N. C. McLEAN,
SPOONER & BROWN,
Att'ys for Pl'ffs.

And day thereof is given the parties.

And afterwards, to wit, upon the 23d day of May, being the 6th judicial day of said May term, in year aforesaid, before said judges aforesaid and said court aforesaid, come now the parties by their attorneys, and after argument heard, the court, not being sufficiently advised, give day to hear their decision thereon.

And afterwards, to wit, upon the 29th day of May, in the year aforesaid, at the court aforesaid, holden before said judge
137 aforesaid, come now the parties, and this court, being sufficiently advised, overrule the demurrer heretofore filed.

And afterwards, to wit, upon the first day of June, in the year aforesaid, at said court aforesaid, begun and holden before said judge aforesaid, come now the parties, by their attorneys, and the court now being sufficiently advised in the premises, do assess the plaintiffs' damages at the sum of three thousand and seventy-five dollars ($3,075 00.)

It is therefore considered by the court that said plaintiffs have and recover of and from said defendants, the said sum of three thousand and seventy-five dollars ($3,075 00) so assessed by the court aforesaid, as also the sum of fifty (58) dollars and fifteen cents, their costs and charges in this behalf laid out and expended.

And afterwards, to wit, on the 24th day of January, A. D. 1858, there was issued from the clerk's office of said court, to the marshal of said district the following, to wit:

The President of the United States of America, to the marshal of the district of Indiana, greeting:

You are hereby commanded that of the goods and chattels, lands and tenements of the city of Aurora to be found in your dis-
138 trict you cause to be made the sum of (3,075) three thousand and seventy-five dollars, which Charles W. West and Joseph Torrence in our circuit court recovered on the first day of June against said the city of Aurora for their damages, which in our said court, by the judgment thereof, was adjudged to the said Charles W. West and Joseph Torrence, on the day and year last aforesaid, as also the sum of (58) fifty-eight dollars and (15) fifteen cents, costs and charges in that behalf expended, whereof the said the city of Aurora is convicted, as appears of record; and have the money before our court, at Indianapolis, on the third Monday in August next, and have you then and there this writ.

Witness honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, and the seal of said court, at Indianapolis, the (4) fourth day of January, 1858.

[SEAL.] HORACE BASSETT, *Clk.*

And afterwards, to wit, on the 17th day of May, A. D. 1858, the same was returned, duly served, with the following indorsement thereon, to wit:

Levied this execution February 24 day, A. D. 1858, upon the following real estate as the property of the defendant, to wit:
139 The public square lying between Bridgeway and Mechanic,

and Second and Third streets; also the public square lying between Bridgeway and Mechanic and Second and Importing streets; also the public square lying between Mechanic and Main and Second and Importing streets; also the public square lying between Main and Judiciary and Second and Third streets; also the public square lying Main and Judiciary and Second and Importing streets, and the pnblic square at the south end of Judiciary street; bounded as follows: on the south by out lot No. (39) thirty-nine; on the west by lot No. (214) two hundred and fourteen; on the east, by lot No. (213) two hundred and thirteen, and on the north by Literary street. All said property above described situate in the town of Aurora, Dearborn county, State of Indiana. And after having advertised the same according to law and the rules of this court, and after having said property appraised, by agreement of plaintiff and defendant, and in accordance with their joint direction, I return this execution without offering said property for sale; also herewith return the appraisement, together with consent of the parties, for me to abandon the levy of the above-described property, May 17th, 1858, it being of no value, as appears from said appraisement.

JOHN L. ROBINSON,
U. S. Marshal, District of Indiana.

140 UNITED STATES OF AMERICA, *District of Indiana, ss:*

I, John H. Rea, clerk of the circuit court of the United States within and for the seventh judicial circuit and district of Indiana, do hereby certify the above and foregoing to be a true and correct copy of the complete record to date of judgment in the above-entitled cause; and that two hundred and twelve dollars and twenty-eight cents was paid by the treasurer of said city of Aurora on said judgment on the 11th of June, A. D. 1861: All of which now appears of record in my office.

In testimony whereof, I have hereunto set my hand and affix the seal of said court, at Indianapolis, this 5th day of May, A. D. 1862.

JOHN H. REA, *Clerk.*

THE UNITED STATES OF AMERICA, *District of Indiana:*

I, Elisha M. Huntington, judge of the United States district court for the district of Indiana, do certify that John H. Rea, esq., is now, and was at the time of making the foregoing certificate the clerk of the circuit court of the United States, for the 7th judicial cir-
141 cuit and district of Indiana, and that his attestation aforesaid is in due form of law.

E. M. HUNTINGTON.

And afterwards, in the same court and before the same judge, at the May term thereof, in the year of our Lord one thousand eight hundred and sixty-five, to wit, on the 16th day of May, the following proceedings were had in said cause, to wit:

Come now the plaintiffs by Mess. Porter & Fishback, their attorneys, and on their motion said defendants are ruled to rejoin to

the several replications heretofore filed by said plaintiffs, on or before the calling of this cause on Friday morning next, and day is given, &c.

And afterwards, in the same court and before the same judge, at the May term thereof, for the year one thousand eight hundred and sixty-five, to wit, on seventeenth day of May, the following proceedings were had in said cause, to wit:

Comes the defendant, by counsel, and on motion the depositions filed in this cause are ordered to be published, and day is given, &c.

And afterwards, in the same court, before the same judge,
142 and at the term last aforesaid, to wit, on the eighteenth day of May, in the year of our Lord one thousand eight hundred and sixty-five, the following proceedings were had in said cause, to wit:

Comes now the said defendant, by her attorney, Jer. Sullivan, esq'r, and files now in open court the defendant's several demurrers, to wit:

A demurrer to the 1st replication of the plaintiff to the 2d plea of the defendant; a demurrer to the replication of the plaintiffs to the 2d, 3d, 4th, 5th, 6th, 7th, and 8th pleas of the defendant; a demurrer to the replication of *of* the plaintiffs to the 3d, 4th, 5th, 6th, 7th, and 8th pleas of the defendant; a demurrer to the 1st replication of the plaintiffs to the 4th plea of the defendant; a demurrer to the 3d replication of the plaintiffs to the 4th plea of defendant; a demurrer to the 1st replication of the plaintiffs to the 3d, 5th, and 6th pleas of the defendant; a demurrer to the 2d replication of the plaintiff to the 3d, 5th, and 6th pleas of defendant; a demurrer to the 1st replication of the plaintiffs to the 3d plea of the defendant; a demurrer to the 1st replication of the plaintiffs to the 5th plea of the defendant; a demurrer to the 1st replication of the plaintiff to the 6th plea of the defendant; and which demurrers are in the words and figures following:

143 In the circuit court of the United States for the district of Indiana, May term, 1865.

CHARLES W. WEST and JOSEPH TORRENCE
vs.
THE CITY OF AURORA.

Comes now said defendant, by her attorney, and craves over of the record and proceedings set out in the first replication to the second plea, and it is read, and is as follows, (which said record is the same above in this record set forth as from the Dearborn circuit court for the May term thereof, 1856, and is not here again repeated;) and defendant says that the 1st replication of plaintiffs to defendant's 2d plea, and the matters and things therein contained, in manner and form as the same are pleaded and set forth, are not sufficient in law for s'd plaintiffs to have or maintain their said action against defendant, and that said defendant is not bound to answer the same. And this she is ready to verify.

Wherefore, by reason of the insufficiency of said replication
144 in this behalf, the defendant prays judgment if said plaintiffs ought to have or maintain their said action against her, and for causes of demurrer she states the following:

1st. Because the said replication does not contain facts sufficient to preclude the defendant from setting up and proving the facts in said plea mentioned as a bar to the 1st count in said declaration.

2d. It does not anywhere appear in said replication that the matters and things in said second plea contained were in issue between the said parties and adjudicated upon in said suit set out and referred to in said replication; but it does appear in and by said replication that no matter of fact was in issue or trial between the parties and adjudicated upon in the suit in said replication referred to, but questions of law only.

3d. Because the matters and things alleged in said replication are no sufficient denial or confession and avoidance of the facts in said 2d plea contained.

4th. Because the matters and things set up in said replication and put in issue are different from the matters and things pleaded in said 2d plea.

5th. Said replication is otherwise uncertain, informal, and insufficient.

WM. S. HOLMAN,
T. D. LINCOLN,
145 JER. SULLIVAN, *Att'ys.*

And said defendant comes and craves oyer of the record and proceedings mentioned in said replication to the 2, 3, 4, 5, 6, 7, and 8 plea, and it is read, and is as follows, (the said record is the same in this transcript set forth as a record of the circuit court of the United States for the district of Indiana, and is not here again repeated,) and says that the plaintiffs' replication to the 2d, 3d, 4th, 5th, 6th, 7th, and 8th pleas of defendant in this behalf pleaded is not sufficient in law for the plaintiffs to have or maintain their said action against defendant, and she is not bound to answer the same. And this she is ready to verify.

Wherefore she prays judgment, &c., and she sets down the following causes of demurrer, viz:

1st. Because the matters and things in said replication contained are not sufficient to preclude the defendant from proving the said several pleas, or one or more of them, as a good defence to said 1st count of declaration.

2d. Because it does not anywhere appear in said replication that the matters pleaded in said 2d, 3d, 4th, 5th, 6th, 7th, and 8th pleas, or any or either of them, was in issue and tried upon the merits thereof, or controverted between them, in the said suit referred to in the said replication.

3d. Because it does appear in and by said replication that no point or matter of fact was in issue or controverted between them
146 and adjudicated upon in said suit referred to in said replication, but questions of law only.

4th. Because the matters and things in said replication alleged are not sufficient to meet and are no sufficient reply to the facts in said second pleas alleged, or any or either of them, and prevent all and each of said pleas from being good defence to said 1st count of said declaration.

5th. Because the matters and things set up and alleged in said 2d, 3d, 4th, 5th, 6th, 7th, and 8th pleas in this behalf pleaded and put in issue therein are not the same, but are different from the matters and things set up and put in issue in the record referred to in the replication to said pleas.

6th. And because the same is otherwise informal, insufficient, and uncertain.

WM. S. HOLMAN,
T. D. LINCOLN,
JER. SULLIVAN, *Att'ys.*

And the said defendant, by her attorneys, comes and craves oyer of the record and proceedings mentioned in the replication to the 3d, 4th, 5th, 6th, 7th, and 8th pleas, and is the same record set out in the 1st replication to the second plea, and says that the plaintiffs' replication to the 3d, 4th, 5th, 6th, 7th, and 8th pleas of defendant in this behalf pleaded is not sufficient in law for s'd plaintiffs to have and maintain their said action against defendant in reply to said pleas, for the following reasons, viz:

1st. It sets up no facts sufficient to preclude the defendant from proving and insisting upon the said several pleas, or one or
147 more of them, as a good defence to the 1st count of said declaration.

2d. It does not anywhere appear in said replication that the matters and things in said pleas mentioned and put in issue by them, or either of them, was in issue between the parties, or controverted between them in the said suit referred to in said replication.

3d. It appears in and by said replication that no point or matter of fact was in issue or controverted between the parties, and adjudicated upon in said suit referred to in said replication; but points of law only.

4th. Because the matters and things in said replication mentioned are not sufficient to meet the facts set up in s'd 3d, 4th, 5th, 6th, 7th, and 8th pleas, or either of them, nor to prevent them, and each of them, from being a good defence to said 1st count.

5th. Because the matters and things set up and put in issue by said pleas 3, 4, 5, 6, 7, and 8 in this behalf pleaded, are not the same, but are different from the matters and things in issue in said replication to s'd pleas.

6th. And because said replication is uncertain, informal, and insufficient; and this she is ready to verify. Wherefore she prays judgment, &c.

WM. S. HOLMAN,
T. D. LINCOLN,
JER. SULLIVAN, *Att'ys.*

And said defendant, by her attorneys, comes and craves
148 over of the record and proceedings mentioned in the 1st replication to the fourth plea, and it is read, being the same as is set out in the 1st replication to the 2d plea, and says that the plaintiffs' first replication to the 4th plea in this behalf pleaded is not sufficient, in law, for the plaintiffs to have and maintain their s'd action against defendant, because she says that the matters and things therein contained are not sufficient, in law, to maintain their said suit, for the following reasons, viz:

1st. Because the fact that the qualified voters of said city had expressed their assent to the taking of the stock named in said replication, was not put in issue in said suit, the fact not being stated positively, but inferentially, and the defendants were not bound to answer the same, and the plaintiffs could take nothing by a demurrer thereto.

2d. Because the facts set up in said replication are not sufficient to preclude the defendant from proving and insisting upon the said plea as a good and sufficient defence to the first count of said declaration.

3d. Because it does not appear in and by said replication that no matter of fact was in issue or tried or controverted between the parties and adjudicated upon in said suit, referred to in said replication; but questions of law only.

4th. Because the facts alleged in said replication are not suf-
149 ficient to meet the facts set up in said 4th plea, and prevent them from being a good defence to s'd first count.

5th. Because the facts set up and put in issue in said 4th plea, as herein pleaded, are not the same, but different from those set up and put in issue in said record, referred to in the replication to s'd plea.

6th. And because the s'd replication is otherwise informal, insufficient, and uncertain; and this she is ready to verify. Wherefore she prays judgment, if, &c.

WM. S. HOLMAN,
T. D. LINCOLN,
JER. SULLIVAN, *Atty's.*

And defendant, by her attorneys, comes and says that the plaintiffs' third replication to the defendant's 4th plea is not sufficient, in law, for the plaintiffs to have and maintain their said action, wherefore she demurs to the same; and for causes of demurrer sets down the following, viz:

1st. The facts set up therein are not sufficient to prevent the defendant from proving and insisting upon the matters and things in said plea contained, as a good and sufficient defence to said first count of declaration.

2d. Because the facts in said replication alleged, that the plaintiffs relied upon the statement made in the said bonds, that they were issued in accordance with the sec. of the city charter and
150 believed it to be true, is not a direct denial of the notice set up in said plea.

3d. Because the facts in said replication set out create no estoppel, as against the defendant, which can in law prevent them from proving the facts in said plea mentioned, and insisting upon the same as a defence against s'd 1st count.

4th. Because the said replication is otherwise uncertain, informal, and insufficient. Wherefore she prays judgment, if, &c.

WM. S. HOLMAN,
T. D. LINCOLN,
JER. SULLIVAN, *Att'ys.*

And defendant, by her attorneys, comes and demurs to the plaintiffs' first replication to the 3d, 5th, and 6th pleas above pleaded, and says the same is not sufficient in law for the plaintiffs to have and maintain their said action against defendant, nor is she bound to answer the same; and this she is ready to verify. Wherefore she sets down the following causes of demurrer, viz:

1st. Because the location of the said Ohio and Mississippi railroad was, by the charter authorizing its construction and location, a matter resting in the discretion of the directors of the Ohio and Mississippi Railroad Company, and nothing in the charter thereof, or in the laws of the State of Indiana, made it necessary that they should locate the said road in or to the city of Aurora.

2d. Because the matters and things set up in said replica-
151 tion, and put in issue therein, are not the same as the matters and things in s'd 3d, 5th, and 6th pleas pleaded, but are different.

3d. Because s'd replication is otherwise informal, insufficient, and uncertain. Wherefore she prays judgment, &c.

WM. S. HOLMAN,
T. D. LINCOLN,
JER. SULLIVAN, *Att'ys.*

And the said defendant, by her attorneys, comes and says that the plaintiffs' second replication to the defendant's 3d, 5th, and 6th pleas is not sufficient in law for the said plaintiffs to have and maintain their said action against defendant, nor is she bound by the laws of the land to answer the same; and this she is ready to verify. Wherefore, &c. And for causes of demurrer sets down the following, viz:

1st. Because the resolution of the city council of the city of Aurora, in said replication set up, does not state, or purport to state that a majority of the qualified voters of the city of Aurora had signified their assent that the said city should subscribe to said stock, as is required by the 18th section of the said city charter.

2d. Because the facts in said replication mentioned present no estoppel.

3d. Because the matters and things set up and put in issue in the said 2d replication to 3d, 5th, and 6th pleas, are not the same
152 as the matters and things pleaded in said pleas, but are other and different.

4th. Because the s'd replication is otherwise informal, insufficient, and uncertain.

WM. S. HOLMAN,
T. D. LINCOLN,
J. SULLIVAN, *Att'ys.*

And the defendant, by her attorneys, comes and says that the 1st replication to the 3d plea of defendant, and the matters and things therein contained, as the same are said replication pleaded and set forth, are not sufficient in law for said pl't'ffs to have and maintain their s'd action against defendant; and this she is ready to verify. Wherefore, by reason of said insufficiency, &c., she prays judgment, &c.; and for causes of demurrer says, 1st, that the matters and things in said replication contained are no ground of defence to said plea.

2d. That said replication does not answer the whole of said plea.

3d. Because said replication is otherwise uncertain, informal, and insufficient.

WM. S. HOLMAN,
T. D. LINCOLN,
JER. SULLIVAN, *Att'ys.*

And the defendant, by her attorneys, comes and says that the first replication of plaintiff to the 5th plea of defendant, and the
153 matters and things therein contained, are not sufficient in law for said plaintiffs to have and maintain their said action against defendant; and this she is ready to verify. Wherefore, by reason of said insufficiency, she prays judgment, &c., and sets down for causes of demurrer the following:

1st. The said replication does not answer the whole of said plea.

2d. The same is otherwise uncertain, informal, and insufficient.

HOLMAN,
LINCOLN,
SULLIVAN, *Att'ys.*

And the defendant comes, avers and says that the fifth replication to the 6th plea of defendant, and the matters and things therein contained as the same are pleaded and set forth therein, are not sufficient in law for the plaintiff to have or maintain their said action against her, nor is she bound by the law of the land to answer the same. And this she is ready to verify. Wherefore, for want of a sufficient replication in this behalf, she prays judgment, &c.; and she sets down the following causes of demurrer:

1st. The facts therein stated are not sufficient to prevent the defendant from proving and insisting upon the facts set up in his said plea.

2d. Because the said replication does not answer the whole
154 of said plea.

3d. Because the same is otherwise uncertain, informal, and insufficient.

WM. S. HOLMAN,
T. D. LINCOLN,
JER. SULLIVAN, *Att'ys.*

And said defendant also files a rejoinder to the 3d replica-
155 tion of the plaintiffs to second plea of defendant in the words and figures following:

(And said replication having been withdrawn, as appears hereafter in this record, said rejoinder is omitted in this record.)

And said defendant also files the similiter to the 4th replication of the plaintiffs to the 2d plea of defendant, to the 2d replication of plaintiffs to the 4th plea of defendants; to the 2d replication of plaintiffs to the 5th plea of the defendant; to the 2d replication of the plaintiffs to the 6th plea of the defendants; to the 2d replication of plaintiff to the 7th plea of defendants; and to the 2d replication of the plaintiffs to the 8th plea of the defendants; and day is given, &c.

And afterward, in the court aforesaid, before the judge aforesaid, and at the term thereof last aforesaid, to wit, on the 23d day of May, in the year of our Lord one thousand eight hundred and sixty-five, the following proceedings were had in said cause, to wit:

Come now the parties, by their respective attorneys, and the several demurrers of the defendant to the plaintiffs' replications having been submitted and argued, the court now takes the same un-
156 der advisement.

And afterwards, in the court aforesaid and before the judge aforesaid, and at the term thereof last aforesaid, to wit, on the twenty-ninth day of May, in the year last aforesaid, the following proceedings were had in said cause, to wit:

This cause is continued.

And afterwards, in the court aforesaid and before the judge aforesaid, and at the November term thereof, to wit, on the eighth day of November, in the year of our Lord one thousand eight hundred and sixty-five, the following proceedings were had in said cause, to wit:

And now come the parties, and the court having considered the demurrers of the defendant to the first replication of the plaintiffs to the 2d plea of the defendant, and to the replication of the plaintiffs to the 2d, 3d, 4th, 5th, 6th, 7th, and 8th pleas of the defendant, and to the replication of the plaintiffs to the 3d, 4th, 5th, 6th, 7th, and 8th pleas of the defendant, and to the 1st and 3d replications of the plaintiffs to the 4th plea of the defendant, and to the 2d replication of the plaintiffs to the 3d, 5th, and 6th plea of the defendant, and being fully advised in the premises, is of opinion that the replication aforesaid, and the matters and things therein alleged, are suf-
157 ficient in law as answers to the said pleas of the defendant.

Wherefore the court overrules each and all of the said demurrers.

And the court having considered the demurrers of the defendant to the 1st replication of the plaintiffs to the 3d, 5th, and 6th pleas of the defendant, and to the 1st replication of the plaintiffs to the 3d plea of the defendant, and to the 1st replication of the plaintiffs to the 5th plea of the defendant, and to the 1st replication of the plaintiffs to the 6th plea of the defendant, and being fully advised in the premises, is of opinion that the said replications and the matters and things therein contained are not sufficient answers to the said pleas.

Wherefore the court sustains the said demurrers, and leave is given to the defendant to file a rejoinder by the morning of the 9th of November inst.

And afterwards, in the same court before the judge aforesaid, and at the term last aforesaid, to wit, on the ninth day of November, of the year last aforesaid, the following proceedings were had in said cause, to wit:

Now comes the defendant and files a rejoinder, and the plaintiffs come and file demurrers thereto.

158 And now come the parties, and the court having considered the demurrers of the plaintiff to the rejoinders of the defendants, and having heard the argument of counsel, and being fully advised in the premises, is of opinion, that the rejoinders aforesaid and the matters and things therein alleged, are not sufficient in law to bar the action of the plaintiffs.

Wherefore the court sustains the said demurrers.

Here follows the rejoinder of the defendant, in the words and figures following, to wit:

159 Circuit court of the United States for the district of Indiana.

CHARLES WEST and JOSEPH TORRENCE
vs.
THE CITY OF AURORA.

And for a rejoinder to the said replication of the said plaintiffs, to the second, third, fourth, fifth, sixth, seventh, and eighth pleas, the defendant says that the plaintiffs ought not to have or maintain their said action against her upon the first count of the declaration, by reason of anything in the said replication alleged, because, the defendant says, that heretofore, to wit, on the 26th day of April, 1861, the plaintiffs then being citizens and residents of the State of Ohio, brought their action in the circuit court of Dearborn county of Indiana, and therein impleaded the defendant and the Ohio and Mississippi Railroad Company, (which latter party was declared to be a nominal party merely,) and in her complaint in said suit they did set up said bonds referred to in the said replication, and the coupons attached thereto and falling due in the year 1858, 1859, 1860,

160 and 1861, being two hundred coupons of $60 each, then due and in the said complaint set up, and allege, substantially, the same facts as are alleged in the first count of the declaration in this suit. And thereupon the defendants pleaded thereto, substantially, the same pleas as the third, fourth, fifth, sixth, seventh, and eighth pleas filed in this case. And in the second paragraph of her answer therein set up, substantially, the same matter and things contained in the third plea in this case. And in the third paragraph of said answer, set up, substantially, the same matters and things contained in the said fifth and sixth pleas herein. And in the fourth paragraph of her answer set up and alleged that a majority of the qualified voters of the city of Aurora did not, at an annual election held in said city prior to the time when said subscription of stock was made in

and to the said Ohio and Mississippi Railroad Company, by the city council of said city, expressed upon their tickets that they were in favor of the subscription by said city council of fifty thousand dollars of capital stock in the Ohio and Mississippi Railroad Company
161 or of any amount of stock whatever in the said company; and that, at the time said subscription was made and said bonds were issued and delivered to the said railroad company, said West, one of the plaintiffs, and a partner of the other, was a director in said company substantially as is alleged in the fourth plea herein. And did, in and by the said fifth paragraph in her answer, aver that the defendant never did sell the said bonds to the said railroad company, as was alleged in the complaint therein, but that the said bonds were deposited, without consideration, with the said company, without any power or authority to sell and dispose of the same, which was well known to the plaintiffs when they received the same from the company in payment of a debt by said company due them.

And in and by the sixth paragraph to said answer aver that the said Ohio and Mississippi Railroad Company was incorporated by an act of the general assembly of Indiana, which took effect on the 14th day of February, 1848; that said company was not incorporated for the purpose or with the design of building a railroad or any other road to, through, or from the said city of Aurora; but by the 13th section of the said act it was provided the president and di-
162 rectors of said company shall have power, and they were thereby invested the rights and powers necessary and proper, for the survey, location, and construction, and repairing of a railroad on the most direct and practical route to Lawrenceburgh, eastward to the Miami river, and westward to Vincennes, on the Wabash river, having in view the interest of the company and the commerce of the citizens of the State of Indiana, and to extend eastward, in the most direct and practicable route, to Cincinnati, in the State of Ohio, and west, on the most direct and practicable route, through the State of Illinois, to St. Louis, in the State of Missouri. And that the said company was not authorized to construct, and never had constructed, or commenced, or attempted to construct any other road but that described in the said 13th section of the said act; and did further aver that at the time of the annual election, in said city, in the year 1849, when it was alleged that a majority of the qualified voters had expressed that they were in favor of the subscription by the city council of the said city of $50,000 of the capital stock of said company. (and that no vote on the subject was ever taken at any other time,) the said company had not surveyed and located their said road
163 so as to make the said city a point on the route, and had made no location thereof whatever, and were not constructing or beginning to construct the same; and that at the time the said subscription was made, to wit on the 28th day of September, 1850, said company had not located their said road through or from said city; and were not engaged in constructing said road to, through, or from said city, and that, on the first day of January, 1852, when said bonds and coupons were issued and delivered to said company the said road,

nor any part thereof, had been located. That afterwards, to wit, on the 6th day of July, 1852, said company made a location of said road, and did file therewith the order of said city council directing said subscription for said $50,000 of said stock as the authority for said subscription, and the resolution of the president and directors of the said railroad, and the executive committee thereof, locating the said road, and did therein allege that the said subscription, and the issue of said bonds and coupons were unauthorized and void.

And the plaintiffs in said suit demurred to the 2d, 3d. 4th, and 6th paragraphs of the answer, which demurrer was sustained by the court, and exceptions taken thereto.

And the plaintiffs therein filed their several replies to the
164 said fifth paragraph of said answer, in the first of which they denied each and all the facts therein set out. And in the second reply to said fifth paragraph they did aver that they purchased the said bonds and coupons from the Ohio and Mississippi Railroad Company in good faith, and paid the said company fully for the same without any notice that the city of Aurora had not sold the said bonds to the said company, and without any notice that the said bonds and coupons, or any of them, had been deposited by said city with said company without any consideration or without any power to sell and dispose of the same. And that the plaintiffs then were, and at the time of bringing the said suit, the legal holders and bearers of said bonds.

And the said defendants did therein demur to said second reply, which demurrer was overruled by the court and exception taken thereto.

And thereupon, afterwards, to wit, on the 23d of May, 1861, the said case was submitted to a jury, and the plaintiffs gave in evidence the bonds and 200 coupons declared upon, and the resolution of the city council of the city of Aurora authorizing the mayor, John D. Haynes, to subscribe said stock, being the same set out in
165 the second replication to the 3d, 5th, and 6th pleas herein, to which reference is had as proof of the assent of a majority of the qualified voters of the said city, and no other proof thereof was offered. And proof of said West that the plaintiffs purchased said bonds in good faith at 77⅓ cents on the dollar, and without knowledge of any defect in said bonds, or that they passed into the hands of the said railroad company for safe-keeping and not for sale, or of the matters and things set up in answer of the defendant.

And the plaintiffs put in two resolutions of the directors of the Ohio and Mississippi Railroad Company, dated July the 6th and July the 23d, and showed that said railroad was not located until the said 6th of July; that being all the evidence of either party on that subject.

And thereupon the court refused to charge the jury that, unless they were satisfied that the said bonds and coupons were sold by the city of Aurora, or by some one by her authorized, that they must find for the defendant, as requested by the defendant.

The court also refused to charge the jury that, if the said subscription of stock was made prior to the time when said rail-
166 road was located to, through, or from said city, they must find for the defendant, as requested by the defendants; and refused to charge that, if the bonds were not actually sold, as the plaintiffs alleged in their complaint, and at the time the said railroad was not surveyed or located to the city of Aurora, they should find for the defendant, as requested by the defendant.

But, at the request of the plaintiffs, charged the jury that, if they believed from the evidence that the plaintiffs purchased the bonds from the railroad company in good faith, and paid a valuable consideration therefor, without any knowledge on their part of the city of Aurora having any objection to the payment of said bonds, or having objection to the manner in which the city of Aurora made said bonds, they should find for the plaintiffs. To which charge, so given at the request of the plaintiffs, the defendants excepted, and did also except severally to the overruling of each of charges so asked by them; and refused at the time of such overruling; and said objections were made part of the record, and a verdict and judgment had in said suit for the plaintiffs; and motion for a new trial was made by the defendants; and, in accordance with the practice of the courts of Indiana, all the evidence was made part of the record, and the
167 case was taken to the supreme of Indiana appeal, and submitted to said court by the parties upon the question raised in the record, at the May term of said court, 1864. And it was, by the said supreme court of Indiana, found, held, and adjudicated that the said railroad to, or through, or from said city of Aurora when the subscription was made; and that the said city council of the said city had no authority to issue said bonds and coupons, and that the said West, being a director in said railroad company at the time, was, by the charter of said railroad company, bound to take notice thereof, and of the facts set out in said pleas; and did, at said term of said court, render a judgment against said plaintiffs of reversal, which said judgment remains in full force, unreversed or modified. All of which will more fully and at large appear by the said record now here, and ready to be produced and shown to the court.

And the plaintiffs further allege that the bonds and coupons declared upon and referred to in said suit were the same as those declared upon and referred to in this suit; that the said plaintiffs and the city of Aurora are the same in each suit; and that the matters of fact and the questions of law put in issue, litigated, and adjudicated upon were the same as those put in issue in the said 2d, 3d, 4th, 5th, 6th, 7th, and 8th pleas herein. And this the defendant is
168 ready to verify.

Wherefore she prays judgment if the plaintiffs ought to have or maintain their aforesaid action thereof upon said first count against her.

WM. S. HOLMAN,
T. D. LINCOLN,
JEREMIAH SULLIVAN,
Counsel for Def't.

And it is agreed by the counsel for the plaintiffs and defendants, that the rejoinder last above pleaded shall be regarded and treated as specially pleaded to the following replications of the plaintiffs, to wit: The 1st replication to the second plea; to the replication to the 3d, 4th, 5th, 6th, 7th, and 8th pleas; to 1st and 3d replications to the 4th plea; to 2d and 3d replications to the 3d plea, and that it is to have the same force and effect, in all respects, as though it was separately and specially pleaded to each of the said replications. And this agreement is to be made part of the record.

THOS. G. MITCHELL, *Pl'ffs' Att'y.*
WM. S. HOLMAN,
T. D. LINCOLN,
JER. SULLIVAN, *Att'ys for Def'ts.*

169 Here follows the record of the proceedings and judgment of the supreme court of the State of Indiana, in the cause entitled The City of Aurora, impleaded with the Ohio and Mississippi Railroad Company, *vs.* Charles W. West and Joseph F. Torrence, above by said defendant in her rejoinder pleaded, in words and figures following, to wit:

170 Plea before the Honorable James L. Worden, James M. Hanna, Samuel E. Perkins, and Andrew Davison, judges of the supreme court of the State of Indiana, at the state-house, in the city of Indianapolis, on the 23d day of May, 1864.

THE CITY OF AURORA, impleaded with the Ohio and Mississippi Railroad Company,
vs.
CHARLES W. WEST and JOSEPH F. TORRENCE.
} Appealed from the Dearborn circuit court.

Be it remembered that heretofore, to wit, on the 25th day of November, A. D. 1862, came the appellants, by their attorneys, and filed in the clerk's office of said supreme court a transcript of the record of the proceedings of the court below, of the above-entitled cause, with an assignment of errors indorsed thereon, in the words and figures following, to wit:

Pleas, &c., begun and held at the court-house, in the city of Lawrenceburgh, in the county of Dearborn, in the State of Indiana, before the Honorable Reuben D. Logan, judge of the 4th judicial circuit of the State of Indiana, of which the county of Dear-
171 born forms a part, it being the May term of said court, in the year of our Lord one thousand eight hundred and sixty-one.

CHARLES W. WEST and JOSEPH F. TORRENCE
vs.
THE CITY OF AURORA, and THE OHIO AND MISSISSIPPI Railroad Company.
} Civil action, No. 297.

Be it remembered that on the 26th day of April, 1861, the above-named plaintiffs, of A. Brower, jr., and Philip Spooner, their attor-

neys, filed in the clerk's office of the Dearborn circuit court their certain complaint in writing, which complaint was in the words and figures following, to wit:

Dearborn circuit court, May term, 1861.

CHARLES W. WEST and JOSEPH F. TORRENCE
vs.
THE CITY OF AURORA and THE OHIO AND MISSISSIPPI RAILROAD COMPANY.

STATE OF INDIANA, *Dearborn county:*

Charles W. West and Joseph F. Torrence, plaintiffs in this suit, complain of the said city of Aurora and the Ohio and Mississippi Railroad Company, defendants, and say for first cause of action herein as follows:

172 1st. That heretofore, to wit, on the day of September, 1850, the said city of Aurora, by virtue of the authority vested in her by the act of the general assembly of the State of Indiana, entitled "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter," approved February 14th, 1848, subscribed for and took fifty thousand dollars of the stock of the said the Ohio and Mississippi Railroad Company, a company chartered to construct, and then constructing a railroad to said city, a majority of the qualified voters of said city having first expressed their assent to such subscription by expressing on their tickets, at an annual election in said city, that they were in favor of the subscription for said stock by the city council of said city; and to raise funds for the payment of said stock, the said city of Aurora made and sold, and delivered to the said Ohio and Mississippi Railroad Company, fifty of the bonds of said city, by each of which bonds the said city acknowledged itself indebted to the said Ohio and Mississippi Railroad Company, or to the bearer of such bond, in the sum of one thousand dollars, negotiable and payable at the North River Bank, in the city of New York, twenty-five years from the date of such bond, upon the presentation and delivery of the same, bearing an interest of six per centum per annum, payable annually on the first day of January, at said bank, in the city of New York, upon presentation and delivery of the

173 proper coupon attached to such bond; all of which bonds, and the said interest coupons attached to the same, were afterwards, to wit, on the day of , 1852, to wit, at the county aforesaid, sold and transferred, and assigned and delivered, by the said Ohio and Mississippi Railroad Company, to the plaintiffs, who ever since have been, and now are, the holders and owners of the same, which said bonds were sealed with the corporate seal of said city, dated the first day of January, 1852, and numbered from one (1) to fifty (50,) both inclusive, a copy of one of which bonds, being of that designated as number one, is filed herewith, and the same is a copy of all of said bonds, with the exception of the number by which they are respectively designated. And the plaintiffs further, in fact, say that on the first day of January, 1858, they were the bearers and own-

ers of that certain note or instrument in writing made by said city of Aurora, called an interest coupon, attached to that one of said bonds which is designated No. 1, signed by the clerk of said city, a copy of which is herewith filed, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the said city of New York, on the first day of January, 1858, being annual interest of said bond No. one ; and on said last-named day they caused said note or coupon to be duly presented for payment, in and at the said
174 North River Bank, and payment of the same was then and there duly demanded and refused, the said city of Aurora having no funds in said bank for payment thereof. And the plaintiffs further say that by a statute passed by the legislature of the State of New York, and approved January, 1836, and ever since in force as a law of said State of New York, it was enacted by the first section thereof, "that all notes in writing made and signed by any person, whereby he shall promise to pay to any other person or his order, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange, according to the custom of merchants ;" and by the second section, "that every such note signed by the agent of any person, under a general or special authority, shall bind such person and shall have the same effect and be negotiable as above provided;" and by the third section, "that the word person, in the two last preceding sections, shall be construed to extend every corporation capable by law of making contracts ;" and by section 4th, "that the payees and indorsers of every such note, payable to them or their order, and to the holders of every such note payable to bearer, may maintain actions for the sum of money therein mentioned against the makers and indorsers of the same respectively, in like manner as in cases of inland bills of exchange."

175 And by a certain other statute passed and approved on the 1st day of January, 1836, and ever since in force as a law of the State of New York, it was enacted that the rate of interest upon the loan and forbearance of any money, goods, or things in action, shall continue to be seven dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time."

Copy of bond above referred to, No 1.

No. 1. UNITED STATES OF AMERICA. No. 1.

State of Indiana, $1,000. City of Aurora, $1,000.

Ohio and Mississippi Railroad Company.

The city of Aurora acknowledges itself indebted to the Ohio and Mississippi Railroad Company, or bearer, in the sum of one thousand dollars, negotiable and payable at the North River Bank, in the city of New York, twenty-five years from date hereof, upon the presentation and delivery of this certificate, bearing an interest of six per

cent. per annum, payable annually on the first day of January, at said bank, in the city of New York, upon presentation and delivery of the proper coupon hereto attached, signed by the clerk of said city; and at all times the holder shall have a lien on the stock of said city in said company for which this is secured in payment, and may exchange the same for a like amount of said stock at any time before the first declaration of cash dividends, and be substituted
176 as stockholder in place of said city upon surrender of this bond.

This bond is issued in part payment of a subscription of fifty thousand dollars by said city of Aurora to the capital stock of the Ohio and Mississippi Railroad Company, by order of the common council of the city of Aurora, on the 28th of September, 1850, in pursuance of the 18th section of an act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter, passed by the general assembly of the State of Indiana, and approved February 14, 1848.

Witness the seal of said city of Aurora, and the signatures of the Mayor and clerk of said city, the first day of January, 1852.

[L. S.] WILL. W. CONWAY,
Clerk of the City of Aurora, Indiana.
SOLOMON P. TUMY,
Mayor of the City of Aurora, Dearborn County, Indiana.

Copy of the coupon referred to as attached to said bond No. 1, *in paragraph No.* 1.

No. 1. Ohio and Mississippi railroad subscription, $50,000.

City of Aurora, Indiana, will pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the first day of January, 1858, being annual interest on bond No. 1.

$60. WILL. W. CONWAY, *Clerk.*

No. 2. And the plaintiffs further state that on the 1st day of
177 January, 1858, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 2, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 2; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon and when said coupon became due the said statutes in the first paragraph hereof set forth were and still are in force as laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 2.

$60. WILL. W. CONWAY, *Clerk.*

178 No. 3. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 3, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the first day of January, 1858, being annual interest on said bond No. 3; and on the day last named plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that, at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of
179 January, 1858, being annual interest on bond No. 3.

$60. WILL. W. CONWAY, *Clerk.*

No. 4. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 4, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond numbered 4; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith,) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at
180 the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 4.

$60. WILL. W. CONWAY, *City Clerk.*

No. 5. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 5, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond numbered 5, and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad Company subscription, $50,000.

181 City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 5.

$60. WILL. W. CONWAY, *City Clerk.*

No. 6. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 6, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 6; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said *said* coupon became due,
the said statutes in the first paragraph hereof set forth were,
182 and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No 6.

$60. WILL. W. CONWAY, *City Clerk.*

No. 7. And the plaintiffs further state that on 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 7, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 7; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and *and* the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the
183 said statutes in the first paragraphs hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 7.

$60. WILL. W. CONWAY, *City Clerk.*

No. 8. And the plaintiffs further state that on the 1st day of January 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 8, by which the said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond No. 8; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment
184 thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph of hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad Company subscription, $50,000.

City of Aurora, Indiana, will pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 8.

$60. WILL. W. CONWAY, *City Clerk.*

No. 9. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond No. 9; and on the day last named the plaintiffs caused the said coupon (a copy of
185 which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad Company subscription, $50,000.

City of Aurora, Indiana, will pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 9.

$60. WILL. W. CONWAY, *City Clerk.*

No. 10. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph of this complaint alleged, and numbered 10, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond No. 10; and on the day last named the plaintiffs caused the said
186 coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 10.

$60. WILL. W. CONWAY, *City Clerk.*

No. 11. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond number 11; and on
187 the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on 1st day of January, 1858, being annual interest on bond No. 11.

$60. WILL. W. CONWAY, *City Clerk.*

No. 12. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint is alleged, and numbered 12, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York,
190 on the 1st day of January, 1858, being annual interest on said bond number 12; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 12.

$60. WILL. W. CONWAY, *City Clerk.*

No. 13. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 13, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York,
191 on the 1st day of January, 1858, being annual interest on said bond number 13; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 13.

$60. WILL. W. CONWAY, *City Clerk.*

No. 14. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph of this complaint is alleged,
192 and numbered 14, by which said city promised to pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1865, being annual interest on said bond number 14; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty-dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 14.

$60. WILL. W. CONWAY, *City Clerk.*

No. 15. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint al-
193 leged, and numbered 15, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 15; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon become due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 15.

$60. WILL. W. CONWAY, *City Clerk.*

No. 16. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint al-
194 leged, and numbered 16, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 16.

$60. WILL. W. CONWAY, *City Clerk.*

No. 17. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 17, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 17; and on the day last named the plaintiffs caused
195 the said coupon (a copy of which is herewith filed) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 17.

$60. WILL. W. CONWAY, *City Clerk.*

No. 18. And the plaintiffss further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 18, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New
196 York, on the 1st day of January, 1858, being annual interest on said bond number 18; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set for were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 18.

$60. WILL. W. CONWAY, *City Clerk.*

No. 19. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph of this complaint alleged, and numbered 19, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on
197 the 1st day of January, 1858, being annual interest on said bond number 19; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the 1st paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 19.

$60. WILL. W. CONWAY, *City Clerk.*

198 No. 20. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 20, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the first day of January, 1858, being annual interest on said bond No. 20; and on the day last named plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay to the bearer sixty dollars, at the North Bank, in the city of New York, on the 1st day of
199 January, 1858, being annual interest on bond No. 20.
$60. WILL. W. CONWAY, *Clerk.*

No. 21. And the plaintiffs further state that on the first day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 21, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond numbered 21; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of
200 January, 1858, being annual interest on bond No. 21.
$60. WILL. W. CONWAY, *City Clerk.*

No. 22. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 22, by which said city promised to pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the first day of January, 1858, being annual interest on said bond numbered 22; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest bond No. 22.

$60. WILL. W. CONWAY, *City Clerk.*

201 No. 23. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 23, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the first day of January, 1858, being annual interest on said bond numbered 23; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 23.

$60. WILL. W. CONWAY, *City Clerk.*

202 No. 24. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 24, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond numbered 24; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and the payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes, in the first paragraph hereof set forth were, and still are, in force as laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 24.

$60. WILL. W. CONWAY, *City Clerk.*

203 No. 25. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 25, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest No. 25; and on the day last named plaintiffs caused the said coupon (a copy of which is filed herewith) to be presented for payment at the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in first paragraph hereof set forth were, and still are, in force as the laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 18 , being annual interest on bond No. .

$60. WILL. W. CONWAY, *City Clerk.*

204 No. 26. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued, as in the first paragraph of this complaint alleged, and numbered 26, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond numbered 26; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 26.

$60. WILL. W. CONWAY, *City Clerk.*

205 No. 27. And the plaintiffs further state that on the 1st of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 27, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond numbered 27; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 27.

$60. WILL. W. CONWAY, *City Clerk.*

206 No. 28. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 28, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond numbered 28; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 28.

$60. WILL. W. CONWAY, *City Clerk.*

207 No. 29. And the plaintiffs further state that on the 1st day of January, 1858, the were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as by the first paragraph of this complaint alleged, and numbered 29, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond numbered 29; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and the payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 29.

$60. WILL. W. CONWAY, *City Clerk.*

210 No. 30. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in first paragraph of this complaint alleged, and numbered 30, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 30; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the 1st paragraph hereof set forth were and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 30.

$60. WILL. W. CONWAY, *City Clerk.*

No. 31. And the plaintiffs further state that on the 1st day of
211 January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 31, by which said city promised to pay to the bearer sixty dollars at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 31; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 32.

$60. WILL. W. CONWAY, *City Clerk.*

No. 33. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain
212 other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 33, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 33, and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 33.

$60. WILL. W. CONWAY, *City Clerk.*

213 No. 34. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 34, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 34; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 34.

$60. WILL. W. CONWAY, *City Clerk.*

214 No. 35. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 35, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 35; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the statutes in the first paragraph of hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 35.

$60. WILL. W. CONWAY, *City Clerk.*

215 No. 36. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 36, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond No. 36; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 36.

$60. WILL. W. CONWAY, *City Clerk.*

216 No. 37. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 37, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858; being interest on said bond number 37; and on the day last named the plaintiffs caused said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi ailroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 37.

$60. WILL. W. CONWAY, *City Clerk.*

No. 38. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to an-
217 other of said bonds issued as in the first paragraph of this complaint alleged, and numbered 38, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 38; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same still remains due and unpaid; and plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes, in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 38.

$60. WILL. W. CONWAY, *City Clerk.*

No. 39. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to an-
218 other of said bonds issued as in the first paragraph of this complaint alleged, and numbered 39, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond numbered 39; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes insaid first paragraph hereof set forth were, and still are, in force as laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 39.

$60. WILL. W. CONWAY, *City Clerk.*

219 No. 40. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 40, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 40; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 40.

$60. WILL. W. CONWAY, *City Clerk.*

220 No. 41. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, attached to another of said bonds issued as in the 1st paragraph of this complaint alleged, and numbered 41, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 41; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being an annual interest on bond No. 41.

$60. WILL. W. CONWAY, *City Clerk.*

221 No. 42. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of his complaint alleged, and numbered 42, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 42; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraphs hereof set forth were, and still are, in force as laws of said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 42.

$60. WILL. W. CONWAY, *City Clerk.*

222 No. 43. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 43, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 43; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 43.

$60. WILL. W. CONWAY, *City Clerk.*

223 No. 44. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this alleged, and numbered 44, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond numbered 44; and on the last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 44.

$60. WILL. W. CONWAY, *City Clerk.*

224 No. 45. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 45, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 45; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 45.

$60. WILL. W. CONWAY, *City Clerk.*

225 No. 46. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 46, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond numbered 46; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiff aver that at the date of said bond and of said coupon, and when said coupon became due, the statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day
226 of January, 1858, being annual interest on bond No. 46.

$60. WILL. W. CONWAY, *City Clerk.*

No. 47. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 47, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 47; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the State of New York.

Copy of coupon.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 47.

$60. WILL. W. CONWAY, *City Clerk.*

227 No. 48. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph of this complaint alleged, and numbered 48, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond No. 48; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 48.

$60. WILL. W. CONWAY, *City Clerk.*

228 No. 49. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 49, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said number 49; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, *on the 1st of January*, 1858, *being annual interest on said bond, number* 49, *and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York*, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 49.

$60. WILL. W. CONWAY, *City Clerk.*

229 No. 50. And the plaintiffs further state that on the 1st day of January, 1858, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 50, by which said city promised to pay the to bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on said bond number 50; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bonds of said coupon, and when said coupon became due, the said statutes in the first paragraph set forth were, and still are, in force as the laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 50.

$60. WILL. W. CONWAY, *City Clerk.*

230 No. 51. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of the same bond set forth and issued as in first paragraph of this complaint alleged, and numbered 1, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond, number 1; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 1.

$60. WILL. W. CONWAY, *City Clerk.*

231 No. 52. And the plaintiffs further state that, on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 2, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 2; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes as in the first paragraph hereof set forth were, and still are, in force as the laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 2.

$60. WILL. W. CONWAY, *City Clerk.*

232 No. 53. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 3, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 3; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 3.

$60. WILL. W. CONWAY, *City Clerk.*

233 No. 54. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 4, by which said city promised to pay to the bearer sixty dollars at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on the said bond numbered 4; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bonds and said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 4.

$60. WILL. W. CONWAY, *City Clerk.*

234 No. 55. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 5, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 5; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes, in the first paragraph hereof set forth were, and still are, in force as the laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 5.

$60. WILL. W. CONWAY, *City Clerk.*

235 No. 56. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in first paragraph of this complaint alleged, and numbered 6, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 6; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when the said coupon became due, the said statutes in the first paragraph set forth were, and still are, in force as the laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 6.

$60. WILL. W. CONWAY, *City Clerk.*

236 No. 57. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in first paragraph of this complaint alleged, and numbered 7, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 7; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond No. 8.

$60. WILL. W. CONWAY, *City Clerk.*

237 No. 59. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 9, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 9; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the first day of January, 1859, being annual interest on said bond No. 9.

$60. WILL. W. CONWAY, *City Clerk*

238 No. 60. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 10, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 10; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bonds and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond No. 10.

$60. WILL. W. CONWAY, *City Clerk.*

239 No. 61. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 11, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond numbered 11; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 11.

$60. WILL. W. CONWAY, *City Clerk.*

240 No. 62. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 12, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 12; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 12.

$60. WILL. W. CONWAY, *City Clerk.*

241 No. 63. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 13, by which said city promised to pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 13; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs avers that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being the annual interest on bond No. 13.

$60. WILL. W. CONWAY, *City Clerk.*

242 No. 64. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 14, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 14; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes, in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 14.

$60. WILL. W. CONWAY, *City Clerk.*

243 No. 65. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 15, by which said city promised to pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 15; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 15.

$60. WILL. W. CONWAY, *City Clerk.*

244 No. 66. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 16, by which said city promised to pay to the bearer sixty dollars at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 16; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when the said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 16.

$60. WILL. W. CONWAY, *City Clerk.*

245 No. 67. And the plantiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of his complaint alleged, and numbered 17, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the first day of January, 1859, being annual interest on bond number 17; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, on the 1st day of January, 1859, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 17.

$60. WILL. W. CONWAY, *City Clerk.*

246 No. 68. And the plantiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 18, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 18; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 18.

$60. WILL. W. CONWAY, *City Clerk.*

247 No. 69. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 19, by which said city promised to pay the bearer sixty dollars at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 19. And on the day last-named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 19.

$60. WILL. W. CONWAY, *City Clerk.*

248 No. 70. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 20, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of Jauuary, 1859, being annual interest on said bond number 20; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond No. 20.

$60. WILL. W. CONWAY, *City Clerk.*

249 No. 71. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 21, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 21; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 21.

$60. WILL. W. CONWAY, *City Clerk.*

250 No. 72. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by the city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged and numbered 22, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 22; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the 1st paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 22.

$60. WILL. W. CONWAY, *City Clerk.*

251 No. 73. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 23, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 24; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond 23.

$60. WILL. W. CONWAY, *City Clerk.*

252 No. 74. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain of other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 24, by which said city promised to pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 24; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 24.

$60. WILL. W. CONWAY, *City Clerk.*

253 No. 75. And the plaintiffs further state that on the 1st day of January, 1859, they the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in first paragraph of this complaint alleged, and numbered 25, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 25; and on the day last named the plaintiffs caused said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, 50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 25.

$60. WILL. W. CONWAY, *City Clerk.*

254 No. 76. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 26, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the first day of January, 1859, being annual interest on said bond number 26; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused. there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due. the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 22.

$60. WILL. W. CONWAY, *City Clerk.*

251 No. 73. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 23, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 24; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond 23.

$60. WILL. W. CONWAY, *City Clerk.*

252 No. 74. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain of other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 24, by which said city promised to pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 24; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 24.

$60. WILL. W. CONWAY, *City Clerk.*

253 No. 75. And the plaintiffs further state that on the 1st day of January, 1859, they the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in first paragraph of this complaint alleged, and numbered 25, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 25; and on the day last named the plaintiffs caused said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, 50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars. at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 25.

$60. WILL. W. CONWAY, *City Clerk.*

254 No. 76. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 26, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the first day of January, 1859, being annual interest on said bond number 26; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused. there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due. the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 26.

$60. WILL. W. CONWAY, *City Clerk.*

255 No. 77. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds, issued as in the first paragraph of this complaint alleged, and numbered 27, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond number 27; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, and payment was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi railroad subscription, $50.000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 27.

$60. WILL. W. CONWAY, *City Clerk.*

256 No. 78. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 28, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond number 28; and on the day last-named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as the laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 28.

$60. WILL. W. CONWAY, *City Clerk.*

257 79. And plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 29, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the first day of January, 1859, being annual interest on bond number 29; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 29.

$60. WILL. W. CONWAY, *City Clerk.*

258 No. 80. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 30, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 30.

$60. WILL. W. CONWAY, *City Clerk.*

No. 81. And plaintiffs further state that on the 1st day of January 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 31, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st

day of January, 1859, being annual interest on bond number 31; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

259 Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 31.

$60. WILL. W. CONWAY, *City Clerk.*

No. 82. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued is in the first paragraph of this complaint alleged, and numbered 32, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond number 32; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 32.

$60. WILL. W. CONWAY, *City Clerk.*

260 No. 83. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 33, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New

York, on the first day of January, 1859, being annual interest on bond number 33; and on the last named the plaintiffs caused said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, and payment thereof was then and there duly demanded, and was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 33.

$60. WILL. W. CONWAY, *City Clerk.*

261 No. 84. And the plaintiffs further state that on the 1st day of January, 1859, they were owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 34, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 34.

$60. WILL. W. CONWAY, *City Clerk.*

No. 85. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint
272 alleged, and numbered 35, by which said city promised to pay to the bearer sixty dollars. at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond number 35; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly pre-

sented for payment at the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 35.

$60. WILL. W. CONWAY, *City Clerk.*

263 No. 86. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 36, by which said city promised to pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 36, and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 36.

$60. WILL. W. CONWAY, *City Clerk.*

264 No. 87. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 37, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York; and payment thereof was then and there duly demanded, but

was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 37.

$60. WILL. W. CONWAY, *City Clerk.*

265 No. 88. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 38, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 38; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 38.

$60. WILL. W. CONWAY, *City Clerk.*

266 No. 89. And the plaintiffs further state that on the 1st day of January, 1859, they were owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 39, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond No. 39; and on the day last named the plaintiffs caused the

said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York; and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 39.

$60. WILL. W. CONWAY, *City Clerk.*

267 No. 90. And the plaintiffs further state that on the 1st day January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 40, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 40 ; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1865, being annual interest on bond No. 40.

$60. WILL. W. CONWAY, *City Clerk.*

268 No. 91. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, atached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 41, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual inter-

est on said bond number 41; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph here set forth were, and still are. in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on *on* bond No. 41.

$60. WILL. W. CONWAY, *City Clerk.*

No. 92. And the plaintiffs further state that on the 1st day
269 of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 42, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 42; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 42.

$60. WILL. W. CONWAY, *City Clerk.*

No. 93. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain
270 other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 43, by which said city promised to

pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 43; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 43.

$60. WILL. W. CONWAY, *City Clerk.*

No. 94. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain
271 other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 44, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 44; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 44.

$60. WILL. W. CONWAY, *City Clerk.*

No. 95. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain
272 other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of

this complaint alleged, and numbered 45, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 45; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 45.

$60. WILL. W. CONWAY, *City Clerk.*

No. 96. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another
273 of said bonds issued as in the first paragraph of this complaint alleged, and numbered 46, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 46; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 46.

$60. WILL. W. CONWAY, *City Clerk.*

No. 97. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of

said bonds issued as in the first paragraph of this complaint
274 alleged, and numbered 47, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 47; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 47.

$60. WILL. W. CONWAY, *City Clerk.*

No. 98. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged,
275 and numbered 48, by which said city promised to pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond number 48; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 48.

$60. WILL. W. CONWAY, *City Clerk.*

No. 99. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other inter-

est coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of *of* this complaint alleged,
276 and numbered 49, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 49; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon, became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 49.

$60. WILL. W. CONWAY, *City Clerk.*

No. 100. And the plaintiffs further state that on the 1st day of January, 1859, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged,
277 and numbered 50, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on said bond number 50; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1859, being annual interest on bond No. 50.

$60. WILL. W. CONWAY, *City Clerk.*

278 No. 101. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of the complaint alleged, and numbered 1, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 1; and on the day last named the plaintiff caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 1.

$60. WILL. W. CONWAY, *City Clerk.*

279 No. 102. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 2, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 2; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 2.

$60. WILL. W. CONWAY, *City Clerk.*

280 No. 103. And plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 3, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 3; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof. And the plaintiffs aver that at the date of said bond and of said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 3.

$60. WILL. W. CONWAY, *City Clerk.*

281 No. 104. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 4, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on said bond number 4; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 4.

$60. WILL. W. CONWAY, *City Clerk.*

282 No. 105. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 5, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 5; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 5.

$60. WILL. W. CONWAY, *City Clerk.*

283 No. 106. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 6, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number six; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 6.

$60. WILL. W. CONWAY, *City Clerk.*

284 No. 107. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 7, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York; and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 7.

$60. WILL. W. CONWAY, *City Clerk.*

No. 108. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint
285 alleged, and numbered 8, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 8; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 8.

$60. WILL. W. CONWAY, *City Clerk.*

No. 109. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of

said bonds, issued as in the first paragraph of this complaint alleged, and numbered 9, by which said city promised to pay to the
286 bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 9; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said *said* statutes in the first paragraph hereof were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 9.

$60. WILL. W. CONWAY, *City Clerk.*

No. 110. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 10, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New
287 York, on the 1st day of January, 1860, being annual interest on bond No. 10; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid; and plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 10.

$60. WILL. W. CONWAY, *City Clerk.*

No. 111. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of

said bonds issued as in the first paragraph of this complaint alleged, and numbered 11, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond
288 number 11; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof alleged were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 11.

$60. WILL. W. CONWAY, *City Clerk.*

No. 112. And the plaintiffs further state that on the 1st day of January, 1860, they were owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 12, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on said bond number 12; and on the day last named, the plaintiff caused the
289 said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 12.

$60. WILL. W. CONWAY, *City Clerk.*

No. 113. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other

interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 13, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 13; and on the day last named the plaintiffs caused the said
290 coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof alleged were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 13.

$60. WILL. W. CONWAY, *City Clerk.*

No. 114. And the plaintiffs aver that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 14, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 14; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for pay-
291 ment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 14.

$60. WILL. W. CONWAY, *City Clerk.*

No. 115. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 15, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 15; and on the day last named the plaintiffs caused said coupon (a copy of which is filed herewith) to be duly presented for payment in the North River Bank, in the city of New York, and payment
292 was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of NewYork, on the first day of January, 1860, being annual interest on bond No. 15.

$60. WILL. W. CONWAY, *City Clerk.*

293 No. 116. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 16, by which said promised to *to* pay to the bearer sixty dollars, at the North River Bank, in the city of New York; and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 16.

$60. WILL. CONWAY, *City Clerk.*

No. 117. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other in-

terest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph in this complaint alleged,
and numbered 17, by which said city promised to pay to the
294 bearer sixty dollars at the North River Bank, in the city of
New York, on the 1st day of January, 1850, being annual interest on bond number 17; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, and payment thereof was and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 17.

$60. WILL. W. CONWAY, *City Clerk.*

No. 118. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 18, by which said city promised to pay to the bearer sixty
dollars, at the North River Bank, in the city of New York,
295 on the 1st day of January, 1860, being annual interest on
bond numbered 18; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 18.

$60. WILL. W. CONWAY, *City Clerk.*

No. 119. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph in this complaint alleged, and numbered 19, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, being annual interest on bond number 19; and on the day
296 last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of the said bond and of the said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws the said State of *of* New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 19.

$60. WILL. W. CONWAY, *City Clerk.*

297 No. 120. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 20, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on said bond No. 20, and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 20.

$60. WILL. W. CONWAY, *City Clerk.*

No. 121. And the plaintiffs further state that on the 1st day
298 of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds, issued as in the first paragraph of this complaint alleged, and numbered 21, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 21; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment on the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 21.

$60. WILL. W. CONWAY, *City Clerk.*

No. 122. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other
299 interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st poragraph of the complaint alleged, and numbered 22, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 22; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 22.

$60. WILL. W. CONWAY, *City Clerk.*

No. 123. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to
300 another of said bonds, issued as in the first paragraph of this complaint alleged, and numbered 23, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 23; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 23.

$60. WILL. W. CONWAY, *City Clerk.*

No. 124. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint
301 alleged, and numbered 24, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 24; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 24.

$60. WILL. W. CONWAY, *City Clerk.*

No. 125. And the plaintiffs further state that on the 1st day of January, 1865, they were the owners and bearers of a certain other interest coupon, made by said city of *of* Aurora, attached to another of said bonds issued as in the first paragraph of this complaint
302 alleged, and numbered 25, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 25; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof alleged were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 25.

$60. WILL. W. CONWAY, *City Clerk.*

No. 126. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds, issued as in the first paragraph of this complaint alleged, and numbered 26, by which said city promised to pay to the
303 bearers sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 26; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer] sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 26.

$60. WILL. W. CONWAY, *City Clerk.*

No. 127. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 27, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on
304 bond No. 27; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 27.

$60. WILL. W. CONWAY, *City Clerk.*

No. 128. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 28, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond
305 number 28; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 28.

$60. WILL. W. CONWAY, *City Clerk.*

No. 129. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph of this complaint alleged, and numbered 29, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on said bond number 29;
306 and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 29.

$60. WILL. W. CONWAY, *City Clerk.*

No. 130. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 30, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on said bond
307 number 30; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 30.

$60. WILL. W. CONWAY, *City Clerk.*

No. 131. And the *the* plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 31; by which said city promised to pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the
308 1st day of Januuary, 1860, being annual interest on bond number 31, and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 31.

$60. WILL. W. CONWAY, *City Clerk.*

No. 132. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 32, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day
309 of January, 1860, being annual interest on said bond number 32; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 32.

$60. WILL. W. CONWAY, *City Clerk.*

No. 133. And the plaintiffs aver that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 33, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York; and
310 payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 33.

No. 134. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon made by said city of Aurora, attached to another of said bonds, issued as in the first paragraph of this complaint alleged, and numbered 34, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on said bond number 34; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly de-
311 manded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 34.

$60. WILL. W. CONWAY, *City Clerk.*

No. 135. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of

said bonds issued as in the first paragraph of this complaint alleged, and numbered 35, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 35; and on the day last named the plaintiffs caused said coupon to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the
312 date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 35.

$60. WILL. W. CONWAY, *City Clerk.*

313 No. 136. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 36, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 36; and on the day last named the plaintiffs caused said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,006.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 36.

$60. WILL. W. CONWAY, *City Clerk.*

314 No. 137. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, attached to another of said bonds is-

sued as the first paragraph of this complaint alleged, and numbered 37, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 37; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 37.

$60. WILL. W. CONWAY, *City Clerk.*

315 No. 138. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds, issued as in the first paragraph of this complaint alleged, and numbered 38, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on 1st day of January, 1860, being annual interest on bond number 38; and on the day last named the plaintiffs caused said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, in the 1st day of January, 1860, being annual interest on bond No. 38.

$60. WILL. W. CONWAY, *City Clerk.*

316 No. 139. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of

said bonds issued as in the first paragraph of this complaint alleged, and numbered 39, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on said bond number 39; and on the day last named the plaintiffs caused said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment was then and there demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on *on* bond No. 39.

$60. WILL. W. CONWAY, *City Clerk.*

317 No. 140. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 40, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 40; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 40.

$60. WILL. W. CONWAY, *City Clerk.*

318 No. 141. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to

another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 41, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, on the first day of January, 1860, being annual interest on bond number 41; and on the day last named the plaintiffs caused said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 41.

$60. WILL. W. CONWAY, *City Clerk.*

319 No. 142. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 42, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 42; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 42.

$60. WILL. W. CONWAY, *City Clerk.*

320 No. 143. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this

complaint alleged, and numbered 43, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 43; and on the day last named the plaintiffs caused the said coupon (a copy is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 43.

$60. WILL. W. CONWAY, *City Clerk.*

321 No. 144. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 44, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 44; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond, and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 44.

$60. WILL. W. CONWAY, *City Clerk.*

322 No. 145. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this com-

another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 41, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, on the first day of January, 1860, being annual interest on bond number 41; and on the day last named the plaintiffs caused said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 41.

$60. WILL. W. CONWAY, *City Clerk.*

319 No. 142. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 42, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 42; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 42.

$60. WILL. W. CONWAY, *City Clerk.*

320 No. 143. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this

complaint alleged, and numbered 43, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 43; and on the day last named the plaintiffs caused the said coupon (a copy is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 43.

$60. WILL. W. CONWAY, *City Clerk.*

321 No. 144. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 44, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 44; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond, and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 44.

$60. WILL. W. CONWAY, *City Clerk.*

322 No. 145. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this com-

plaint alleged, and numbered 45, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 45; and on the day last named the plaintiffs cause the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragrahph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 45.

$60. WILL. W. CONWAY, *City Clerk.*

323 No. 146. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon made by the said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 46, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 45.

$60. WILL. W. CONWAY, *City Clerk.*

324 No. 147. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon made by the said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 47, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond

numbered 47; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 47.

$60. WILL. W. CONWAY, *City Clerk.*

325 No. 148. And the plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 48, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 48; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and are still, in force as laws of said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, the the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 48.

$60. WILL. W. CONWAY, *City Clerk.*

326 No. 149. And plaintiffs further state that on the 1st day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 49, by which said city promised to pay

to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 49; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city New York, on the 1st day of January, 1860, being annual interest on bond No. 49.

$60. WILL. W. CONWAY, *City Clerk.*

327 No. 150. And the plaintiffs further state that on the first day of January, 1860, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 50, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond number 50; and on the day last named the plaintiffs caused said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1860, being annual interest on bond No. 50.

$60. WILL. W. CONWAY, *City Clerk.*

328 No. 151. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to an-

other of said bonds issued as in the first paragraph of this complaint alleged, and numbered 1, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond number 1; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 1.

$60. WILL. W. CONWAY, *City Clerk.*

329 No. 152. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 2, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond number 2; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 2.

$60. WILL. W. CONWAY, *City Clerk.*

330 No. 153. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this com-

plaint alleged, and numbered 3, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 1; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 3.

$60. WILL. W. CONWAY, *City Clerk.*

331 No. 154. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 4, by which said city promised to pay to the bearer sixty dollars at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 4; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 4.

$60. WILL. W. CONWAY, *City Clerk.*

332 No. 155. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, at-

tached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 5, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 5; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof alleged were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 5.

$60. WILL. W. CONWAY, *City Clerk.*

333 No. 156. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 6, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 6; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 6.

$60. WILL. W. CONWAY, *City Clerk.*

334 No. 157. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached

to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 7, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 7; and on the day last named the plaintiff caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid; and plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were and still are in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 7.

$60. WILL. W. CONWAY, *City Clerk.*

335 No. 158. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 8, by which said city promised to pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 8; and on the day last named, the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 8.

$60. WILL. W. CONWAY, *City Clerk.*

336 No. 159. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another

of said bonds issued as in the first paragraph of this complaint alleged, and numbered 9, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 9; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 9.

$60. WILL. W. CONWAY, *City Clerk.*

337 No. 160. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 10, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York; and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 10.

$60. WILL. W. CONWAY, *City Clerk.*

No. 161. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other
338 interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 11, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual in-

terest on bond number 11; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 11.

$60. WILL. W. CONWAY, *City Cerk.*

No. 162. And the plaintiffs further state that on the 1st day of
339 January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 12, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 12; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond o. N12.

$60. WILL. W. CONWAY, *City Clerk.*

340 No. 163. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and number 13, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city

of New York, on the 1st day of January, 1861, being annual interest on bond number 13; and on the day last named the plaintiffs caused said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 13.

$60. WILL. W. CONWAY, *City Clerk.*

341 No. 164. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 14, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 14; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 14.

$60. WILL. W. CONWAY, *City Clerk.*

342 No. 165. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 15, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of

New York, on the 1st day of January, 1861, being annual interest on bond number 15; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 15.

$60. WILL. W. CONWAY, *City Clerk.*

343 No. 166. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in the 1st paragraph of this complaint alleged, and numbered 16, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 16; and on the day last named the plaintiffs cause the said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and *and* still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 16.

$60. WILL. W. CONWAY, *City Clerk.*

344 No. 167. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 17, by which said city of Aurora promised to

pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 17; and on the day last named the plaintiffs caused said coupon (a copy of which is herewith filed) to be duly presented for payment in the said North River Bank, in said city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 17.

$60. WILL. W. CONWAY, *City Clerk.*

345 No. 168. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph alleged, and numbered 18, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 18; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 18.

$60. WILL. W. CONWAY, *City Clerk.*

346 No. 169. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 19, by which said city promised to

pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 19; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 19.

$60. WILL. W. CONWAY, *City Clerk.*

347 No. 170. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 20, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 20; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 20.

$60. WILL. W. CONWAY, *City Clerk.*

348 No. 171. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in the first paragraph of

this complaint alleged, and numbered 21, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 21; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 21.

$60. WILL. W. CONWAY, *City Clerk.*

349 No. 172. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by the city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 22, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the first day of January, 1861, being annual interest on said bond No. 22; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 22.

$60. WILL. W. CONWAY, *City Clerk.*

350 No. 173. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph of this com-

plaint alleged, and numbered 23, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond number 23; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 23.

$60. WILL. W. CONWAY, *City Clerk.*

351 No. 174. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 24, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond number 24; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 24.

$60. WILL. W. CONWAY, *City Clerk.*

352 No. 175. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to

another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 25, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 25; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded but was then and there refused there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 25.

$60. WILL. W. CONWAY, *City Clerk.*

353 No. 176. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 26, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 26; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, 50,000.

City of Aurora, Indiana, will pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 26.

$60. WILL. W. CONWAY, *City Clerk.*

354 No. 177. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached

to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 27, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 27; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 27.

$60. WILL. W. CONWAY, *City Clerk.*

355 No. 178. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in the 1st paragraph of this complaint alleged, and numbered 28, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 28; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 28.

$60. WILL. W. CONWAY, *City Clerk.*

356 No. 179. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached

to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 29, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 29; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And the plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the 1st paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 29.

$60. WILL. W. CONWAY, *City Clerk.*

357 No. 180. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by the said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 30, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the1st day of January, 1861, being annual interest on bond number 30; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 30.

$60. WILL. W. CONWAY, *City Clerk.*

358 No. 180. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another

of said bonds issued as in the first paragraph of this complaint alleged, and numbered 30, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond number 30; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 30.

$60. WILL. W. CONWAY, *City Clerk.*

359 No. 181. And the plaintiffs further state that on the first day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 31, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond number 31; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 31.

$60. WILL. W. CONWAY, *City Clerk.*

360 No. 182. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another

of said bonds issued as in the first paragraph of this complaint alleged, and numbered 32, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 32; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof alleged were, and still are, in force as laws of said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 32.

$60. WILL. W. CONWAY, *City Clerk.*

361 No. 183. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 33, by which said city promised to pay to the bearers sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond No. 33; and on the day last-named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on 1st day of January, 1861, being annual interest on bond No. 33.

$60. WILL. W. CONWAY, *City Clerk.*

362 No. 184. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain

other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged and numbered 34, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 34; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 34.

$60. WILL. W. CONWAY, *City Clerk.*

363 No. 185. And the plaintiffs further state that on the 1st day of January, 1861, they were owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 35, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 35; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment at the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph of this complaint were, and still are, in force as laws in the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 35.

$60. WILL. W. CONWAY, *City Clerk.*

364 No. 186. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to

another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 36, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond No. 36; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, were, and still are, in force as laws of the State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 36.

$60. WILL. W. CONWAY, *City Clerk.*

365 No. 187. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 37, by which said city promised to pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 37; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof alleged, were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 37.

$60. WILL. W. CONWAY, *City Clerk.*

366 No. 188. And the plaintiffs further that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached

to another of said bonds issued as in the first paragraph of the complaint alleged, and numbered 38, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 38; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the 1st paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 38.

$60. WILL. W. CONWAY, *City Clerk.*

367 No. 189. And the plaintiffs aver that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 39, by which said city promised to pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond number 39; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 39.

$60. WILL. W. CONWAY, *City Clerk.*

368 No. 190. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to

another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 40, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond number 40; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 40.

$60. WILL. W. CONWAY, *City Clerk.*

369 No. 191. And the plaintiffs further state that on the 1st day of January, 1861, they were owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 41, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond number 41; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 41.

$60. WILL. W. CONWAY, *City Clerk.*

370 No. 192. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers

of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 42, by which the said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond No. 42; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof alleged were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 42.

$60. WILL. W. CONWAY, *City Clerk.*

371 No. 371. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the 1st paragraph of this complaint alleged, and numbered 43, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond No. 43; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due the said statutes in the first paragraph hereof were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 43.

$60. WILL. W. CONWAY, *City Clerk.*

372 No. 194. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 44, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond No. 44; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 44.

$60. WILL. W. CONWAY, *City Clerk.*

373 No. 42. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 45, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 45; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 45.

$60. WILL. W. CONWAY, *City Clerk.*

374 No. 196. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 46, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond No. 46; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 47.

$60. WILL. W. CONWAY, *City Clerk.*

375 No. 198. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 48, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 48; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as a law of said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 46.

$60. WILL. W. CONWAY, *City Clerk.*

376 No. 197. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 47, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond No. 47; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in the said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof alleged were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 48.

377 No. 199. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 49, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York. on the 1st day of January, 1861, being annual interest on said bond No. 49; and on the day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 49.

$60. WILL. W. CONWAY, *Clerk.*

378 No. 200. And the plaintiffs further state that on the 1st day of January, 1861, they were the owners and bearers of a certain other interest coupon, made by said city of Aurora, attached to another of said bonds issued as in the first paragraph of this complaint alleged, and numbered 50, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on said bond No. 50; and on day last named the plaintiffs caused the said coupon (a copy of which is filed herewith) to be duly presented for payment in said North River Bank, in the city of New York, and payment thereof was then and there duly demanded, but was then and there refused, there being no funds in said bank for the payment thereof, and the same is still due and unpaid. And plaintiffs aver that at the date of said bond and of said coupon, and when said coupon became due, the said statutes in the first paragraph hereof set forth were, and still are, in force as laws of the said State of New York.

Copy of coupon.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1861, being annual interest on bond No. 50.

$60. WILL. W. CONWAY, *City Clerk.*

379 Wherefore, and not in any manner waiving their right to hold said Ohio and Mississippi Railroad Company liable in an action hereafter to be brought upon a guarantee of said bonds and interest thereon which it may have made to said plaintiffs, the plaintiffs make the said Ohio and Mississippi Railroad Company defendants hereto, to answer only as to its assignments of said bonds and coupons and the delivery thereof to said plaintiffs, and as to any interest of said railroad company in the said subject of this action; and said plaintiffs demand judgment against the said city of Aurora for the amount of said coupons which are severally still due and wholly unpaid, viz: $12,000, and interest on said several coupons from the time they respectively fall due, and for costs and charges of protest, and all other proper relief against said city of Aurora, and generally for damages to the amount of twenty thousand dollars.

A. BROWER & P. S. SPOONER,
Att'ys for Plaintiffs.

A. Brower acknowledges himself security for costs in this case April 25, 1861.

A. BROWER.

Be it remembered that on the 8th day of May, 1861, the same being the 3d judicial day of the May term of said court, the following proceedings were had herein, to wit:

380 The parties come, by counsel, and the defendants file herein a motion in writing to strike out surplusage from complaint, which motion reads as follows, to wit:

CHARLES W. WEST and JOSEPH F. TORRENCE
vs.
THE CITY OF AURORA and THE OHIO AND MISSISSIPPI RAILROAD COMPANY.
} Civil action.

Now comes the city of Aurora, by Holman & Haynes, her attorneys, and move the court that the complaint filed in said cause by said plaintiffs shall be reformed and the surplusage and tautology therein set aside and stricken out in this respect, and for the reason following, to wit: that said action is brought on two hundred coupons, all of the exact tenor of the following, to wit:

Ohio and Mississippi Railroad Company, $50,000.

City of Aurora, Indiana, will pay to the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1858, being annual interest on bond No. 1.

$60. WILL. W. CONWAY, *City Clerk.*

Except as to times of payment and number of bond, the said coupon being for the payment of interest on fifty bonds, numbered from 1 to 50, both inclusive, fifty of said coupons being payable on the
381 1st day of January, 1858; fifty on the 1st day of January, 1859; fifty on the 1st day of January, 1860; and fifty on the 1st day of January, 1861; and four of said coupons, referring to each one of said bonds by its number. And the said plaintiffs having filed a complaint in said action, embracing a distinct paragraph on each one of said coupons, whereas by the setting forth of said coupons, with averments of the identical tenor therewith of all the other of said coupons, except in the respects aforesaid, the said complaint would be sufficiently specific and certain.

Wherefore the said city of Aurora moves that all of said separate paragraphs, except the first, be stricken out as surplusage.

HOLMAN & HAYNES,
Att'ys for the City of Aurora.

And day is given.

And afterwards, to wit, on the 13th day of May, 1861, the same being the 7th judicial day of the May term of said court, the following proceedings were had herein, to wit:

The parties come, and the court being sufficiently advised of the premises, overrule the motion of said defendant to strike out surplusage, to which ruling of the court the said defendants at the time excepted.

382 A demurrer to the complaint herein, to wit:

And a separate demurrer to the 1st and 2d paragraph of the complaint, to wit:

And afterwards, on the 14th day of May, 1861, the same being the 8th judicial day of the May term of said court, the following proceedings were had herein, to wit:

Come the parties, and the court being now sufficiently advised of the premises, overrule the demurrer filed herein by the defendants to the complaint, and to the 1st and 2d paragraphs of said complaint; to the overruling of each of which demurrers the said defendant at the time excepted.

And afterwards, on the 17 day of May, 1861, the same being the 11th judicial day of the May term of said court, the following proceedings were had herein, to wit:

CHARLES W. WEST and JOSEPH F. TORRENCE
vs.
CITY OF AURORA and THE OHIO AND MISSISSIPPI Railroad Company. } Civil action.

383 Now comes the city of Aurora, defendant aforesaid, by Homan & Haynes, her attorneys, and for answer to said plaintiffs' complaint herein says:

First. That the said complaint and the matters and things therein set forth are false and wholly untrue, and she denies each and every allegation of said complaint.

Second. And for further answer to said complaint, said city of Aurora says that the Ohio and Mississippi Railroad Company was not a chartered company for making a road or roads to the said city of Aurora, or for doing any other act or thing touching said city, or for the promotion of the local interests thereof. And the said defendant, the said city of Aurora aforesaid, specially avers that on the day of September, 1850, when the said subscription was made by the said city council of said city of Aurora for fifty thousand dollars of the capital stock of said Ohio and Mississippi Railroad Company, the road of said company, that is to say, the Ohio and Mississippi Railroad, was not located to or through the said city, and the said Ohio and Mississippi Railroad Company was not on the said day of September, 1850, the day on which said subscription was made, constructing, nor had said company at any time before that day been engaged in the construction of a railroad, or any other road to or through or from the said city of Aurora, nor was the said company required by their act of incorporation to construct a road to, through, or from said city. Wherefore the said city of Aurora says that the city council thereof were not at the time said subscription was made as
384 aforesaid, authorized to make the same, and the said subscription and the bonds issued thereon were unauthorized and void.

Third. And for further answer herein, the said city of Aurora says that the said Ohio and Mississippi Railroad Company was not a chartered company for making a road or roads to the city of Aurora, and

was not on the day of September, 1850, when said subscription for fifty thousand dollars of stock was made, making, and had not been at any time before that day engaged in making, a railroad or any other road to, through, or from the said city of Aurora, but said company was incorporated by the general assembly of the State of Indiana, entitled "An act to incorporate the Ohio and Mississippi Railroad Company," which act took effect on the 14th day of February, 1848; that said company was by virtue of the 13th section of said act, authorized to survey and locate and construct a railroad in the most direct and practicable route between Lawrenceburgh, on the Ohio river, and Vincennes, on the Wabash river, having in view the interests of the company and the convenience of the citizens of the State of Indiana, and to extend eastwardly on the like *like* most direct and practicable route to the city of Cincinnati, in the State of Ohio, and to extend westwardly on the like most direct and practicable route, through the State of Illinois, to the city of St. Louis, in the State of Mis-
385 souri; that the said company were not authorized, and never has, since the incorporation thereof, been engaged in the construction of any other road whatever. except the railroad contemplated by the said 13th section of said act of incorporation. And the said city of Aurora avers that on the day of September, 1850, the day on which the said city council of said city of Aurora made said alleged subscription of fifty thousand dollars of the capital stock of said railroad company, the said company had not located their said road between the points designated in said 13th section of said act of incorporation, and were not engaged in making their said railroad to, through, or from the said city of Aurora. And the said city of Aurora further avers that on the 1st day of January, 1852, the day on which said bonds were signed and issued, and delivered to said company by the city council of said city, they said company were not making, nor had said company at any time before the 1st day of January, 1852, been engaged in making, their said road to or through the said city of Aurora, nor had said company located or determined to locate their road to or through the said city of Aurora, on the said 1st day of January, 1852, or at any time preceding that day. And the said city further avers that said subscription was made for capital stock of said company, and said bonds and coupons were issued in payment of
386 said subscription, and accruing interest thereon, and for no other purpose whatever. Wherefore the city of Aurora, defendant aforesaid, says that the Ohio and Mississippi Railroad Company was not a company chartered for making a road or roads to said city within the meaning of the 13th section of the act of incorporation of said city, to wit, the 18th section of an act entitled "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter," approved February 14, 1848, or to any other act or thing touching the local affairs of said city within the meaning of said 18th section of said act, and that said company had not at or before the time when said subscription was made, nor on or before the 1st day of January, 1852, when said bond and coupons were issued and delivered to said company, located their said road to or through said city of

Aurora. Wherefore she says that said act of the city council of said city in making said subscription or issuing said bonds and coupons as aforesaid, were illegal, unauthorized, and void.

Fourth. And for further answer herein, the said city of Aurora says that a majority of the qualified voters of said city did not at an annual election held in said city prior to the time when said subscription was made by said city council, express upon their tickets that they were in favor of the subscription by the city council of said city of fifty thousand dollars of the capital stock of the Ohio and
387 Mississippi Railroad Company, or of any amount of stock whatever in said company. And the defendants aver that said Charles W. West, one of said plaintiffs, was at and before the time when said subscription was made, and said bonds were issued and delivered to said company, a director in said company. Wherefore the said city of Aurora says that the subscription made as aforesaid by said city council, as set forth in said plaintiffs' complaint, was unauthorized and void, and the bonds and coupons issued thereon as aforesaid, unauthorized and void.

Fifth. And for further answer herein, the said city of Aurora says that she never did at any time sell the said bonds to the said company as in the said complaint alleged, and the said plaintiffs are not the legal holders thereof, but the said bonds and coupons were deposited without consideration with said company, without any power or authority whatever to sell or dispose of the same, which fact was well known by said plaintiffs, who received the same from said company in payment of a debt due by said company to them. Wherefore the said city of Aurora says that the said plaintiffs are not the legal bearers or holders of said bonds or coupons thereunto attached.

Sixth. And the said city of Aurora, defendant aforesaid, for further and additional answer to said complaint, says that the Ohio and Mississippi Railroad Company was incorporated by an act of
388 the general assembly of the State of Indiana, entitled "An act to incorporate the Ohio and Mississippi Railroad Company," which took effect on the 14th day of February, 1848; that said company was not incorporated or chartered for the purpose, or with the design of constructing a railroad or any other road to, through, or from the said city of Aurora, but by the 13th section of said act of incorporation, it is provided as follows: That the president and directors of said company shall be, and they are hereby, invested with all the rights and powers necessary and proper for the survey, location, construction, and repairing of a railroad on the most direct and practicable route between Lawrenceburgh, on the Ohio river, and Vincennes, on the Wabash river, having in view the interests of the company and the convenience of the citizens of the State of Indiana, and to extend eastwardly on the most direct and practicable route to the city of Cincinnati, in the State of Ohio, and to extend westwardly on the like most direct and practicable route, through the State of Illinois, to the city of St. Louis, in the State of Missouri. And the said defendant avers that said company was not authorized to construct, and have never constructed or commenced or attempted the construc-

tion of any other road whatever, except the railroad in said section of said act designated and provided for.

And the said city of Aurora avers that at the time of the
389 annual election in said city in the year 1849, on the first Monday in April, 1849, when the alleged vote was taken in said city, and when it is alleged a majority of the qualified voters of said city expressed upon the tickets that they were in favor of the subscription by the city council of said city of fifty thousand dollars of the capital stock of said company, (and the defendant expressly charges and asserts that no vote was ever taken at any other time by the citizens of said city in favor of a subscription to the capital stock of said company, nor was there ever any other expression whatever on the part of said qualified voters at any election whatever on the subject aforesaid,) the said company had not surveyed and located their said railroad so as to make said city a point on the route thereof, and had in truth made no location thereof whatever, and were not constructing or beginning to construct the same.

And said defendant further says that at the time said subscription was made by said city council, to wit, on the day of September, 1850, the said company had not located their said road through or from said city, and were not engaged in the construction of said road to, through, or from said city.

And said city further says that on the 1st day of January, 1852, when the said bond and coupons were issued and delivered to said company, as alleged by said plaintiffs in their complaint, the said road nor any part thereof had been located, and the said presi-
390 dent and directors had not located the same to said city, or through or from the same, and said city was not by the act of said president or directors, or otherwise, a point on the route of said road, and said company were not making their said road to said city, or through or from the same; but afterwards, to wit, on the 6th day of July, 1852, said company made a location of said road by virtue of the authority vested in them by the act aforesaid; and the said city file herewith the order of the city council of said city directing the subscription for fifty thousand dollars' worth of the capital stock of said company, on the authority of which said subscription was made, and also the resolutions of the president and directors of said company and executive committee thereof, locating said road to said city of Aurora. Wherefore said city of Aurora says that the said subscription by the city council of said city. and the bonds and coupons issued thereon as aforesaid, were unauthorized and void. And said city avers that the said plaintiff, Charles W. West, was, during all the aforesaid time and at the time of the location of said railroad, a director of said company, and the said plaintiffs at the time they received said bonds well knew all of the facts aforesaid.

Seventh. And for further answer to said complaint the said city of Aurora, defendant aforesaid, says that a majority of the quali-
391 fied voters of said city did not an annual election of said city, or at any other time whatever, express upon their tickets that they were in favor of the subscription of fifty thousand dollars

(or any other amount) of the capital stock of the Ohio and Mississippi Railroad Company by the city council, and that said city council, without authority, on the day of September, 1850, subscribed for fifty thousand dollars of the capital stock of the Ohio and Mississippi Railroad Company; and afterwards, to wit, on the 1st day of January, 1852, the said council issued and delivered to the said company the bonds and coupons in said complaint mentioned, who delivered the same to *to* said plaintiffs, one of whom, the said Charles W. West, was, during all of said time, one of the directors of said company. And the said city of Aurora avers that as an inducement to the said city council to make said subscription and issue the said bonds and coupons the said company and the agents thereof who were employed to obtain subscriptions to the capital stock of said company, represented to the said city council that to give assistance and credit to said company and insure the construction of said road it was important that the city of Aurora should make the subscription and issue the bonds and coupons aforesaid, and place the same in the custody of said company, and permit said company to
392 issue said bonds and coupons to promote the interest of the company and increase the credit thereof, with the express and distinct assurance from the said company that the city of Aurora should never be called upon for the payment of said bonds and coupons; that if the said company sold or hypothecated said bonds the said company would pay the interest thereon, and that as soon as the said road was completed the said company would surrender or cause to be surrendered to said city the bonds and coupons aforesaid, and the stock subscribed for by said city should be surrendered or cancelled. And the said city of Aurora avers that on the representations aforesaid and in consideration of the said engagement of said company the said city council was induced to, and did, make the subscription and issue the bonds and coupons aforesaid, the said company and her agents assuring the said city council that preliminary surveys and estimates had been made by said company of the cost of the construction of their said road, and the profits which said road would produce, and that the stock of said company on the completion of said road would be above par. And the said city further avers that the said Charles W. West during all of the time aforesaid was one of the directors of said company, and said plaintiffs
393 were at the time they received said bond and coupons fully informed of the facts aforesaid, and well knew that said company had not purchased the said bonds from said city.

HOLMAN & HAYNES,
Attorneys for the City of Aurora.

And a rule was granted against said plaintiffs to reply thereto on or before the next calling of the cause; and in discharge thereof on the 22d day of May, 1861, they filed herein the following demurrer, to wit:

CHARLES W. WEST and JOSEPH TORRENCE
v.
THE OHIO AND MISS. R. R. CO.

The said plaintiffs now come and severally demur to the second, the third, fourth, and sixth paragraphs of the defendants' answer, for the reason that the same and each of them do not contain sufficient facts to constitute a defence to the said pl'ffs' action.

P. L. SPOONER,
A. BROWER, *for Pl'ffs.*

And afterwards, on the 22 day of May, 1861, the same being the 15th judicial day of the May term of said court, the following proceedings were had herein, to wit:

Now at this time come the parties, and the court being sufficiently advised, sustain the demurrer of the plaintiffs to the second,
394 third, fourth, and sixth paragraphs of the defendants' answer, to which ruling of the court in sustaining said demurrer to each of said paragraphs the said defendant at the time objected and excepted, and the plaintiffs now file their replies to the said fifth and seventh paragraphs of said answer, to wit:

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Plaintiffs, for reply to the 5th and 7th parts of defendants' answer, say, that each of said paragraphs and every matter therein alleged are untrue, and they deny the same.

2d. And for further reply to the 5th part of the said answer the plaintiffs say, that they purchased said bonds and coupons from said Ohio and Mississippi Railroad Company in good faith, and paid said company fully for the same without any notice that the said city of Aurora had not sold the said bonds to said company, and without any notice that said bonds and coupons, or any of them, had been deposited by said city with with said company, without any consideration, or without any power to sell and dispose of the same, and the plaintiffs are, and at the time of bringing this suit were, the legal holders and bearers and owners of said bonds and coupons in the complaint
395 referred to and described. And the said plaintiffs say that before the commencement of this suit the said Ohio and Mississippi Railroad Company had finished and constructed their said railroad from the mouth of the Great Miami river, to and through the city of Aurora, to the town of Vincennes, on the Wabash river, and from the mouth of the Great Miami river to the city of Cincinnati, Ohio.

3. And for further reply to the 7th part of said answer plaintiffs say, that at the time the plaintiffs purchased from the said Ohio and Mississippi Railroad Company the bonds and coupons in the complaint mentioned, and paid said company in full therefor, they had no notice whatever that a majority of the qualified voters of the said city of Aurora had not, at an annual election in said city, expressed upon their tickets that they were in favor of subscription of $50,000

by said city to the capital stock of said Ohio and Mississippi Railroad Company, or that the said council of said city subscribed for the said stock, without authority, or that said subscription was made, or bonds and coupons delivered, to said company upon the assurance of said company that said city should never be called upon to pay said bonds or coupons, or if that said company sold or hypothecated said bonds that she, the company aforesaid, should pay the interest on
396 the same; or that as soon as said road was completed the said bonds and coupons should be surrendered up to said city by said company, and the stock subscribed for by said city should be surrendered when completed, or that said stock was subscribed, or said bonds and coupons were issued upon any such condition, or representation or assurance, as in said part alleged, or upon any assurance by said company that preliminary surveys and estimates had been made by said company of the cost of the construction of said road, and the profits which said road would produce, and that the stock of said company, on the completion of said road, would be above par, and without any notice, that the said company had not purchased said bonds of said company, (city?)

4. For further reply to the seventh paragraph of said answer plaintiffs say that they purchased from said Ohio and Mississippi Railroad Company the bonds and coupons in the complaint referred to, in good faith, and paid said company fully for the same, without any notice to them that the said did not own the same, or that the company had no right to sell or dispose of the same as they should see fit, or that the city of Aurora had any defence whatever against the validity of said bond and coupons, or any of them.

BROWER & SPOONER,
For Plaintiffs.

397 And the defendants now file herein their demurrer to the 2d, 3d, and 4th paragraphs of said reply, to wit:

CHARLES W. WEST and JOSEPH TORRENCE
v.
THE CITY OF AURORA *et al.*
} Civil action.

Now comes the said city of Aurora, one of said defendants, by Holman & Haynes, her attorneys, and demurs to the second paragraph of said plaintiffs' reply, for the following grounds of objection:

1st. Because the said paragraph of said reply does not state facts sufficient to enable the said plaintiffs to maintain their said action.

And the city of Aurora demurs to the 3d paragraph of said plaintiffs' reply for the following grounds of objection, viz:

1st. Because the said paragraph of said reply does not state facts sufficient to enable the said plaintiffs to maintain their said action.

And the said city of Aurora demurs to the 4th paragraph of said reply for the following grounds of objection, viz:

1st. Because the said paragraph of said reply does not state facts sufficient to enable the said plaintiff to maintain said action.

HOLMAN & HAYNES,
Att'ys for the City of Aurora.

398 And the court, being sufficiently advised of the premises, overrules said demurrer; to the overruling of which demurrer, to each paragraph of said replies, the defendants, at the time, objected and excepted.

And afterwards, on the 23d day of May, 1861, the same being the 16th judicial day of the May term of said court, the following proceedings were had herein, to wit:

Come the parties, and the issue being joined herein, a jury is called to try the same, as follows, to wit: Obiah Hayes, Thomas Harrison, George Axby, Wm. D. Horner, Rezin Reeves, Benjamin Eubank, John Hudleston, David Armis, Anderson F. Gage, James Little, Benjamin Mulford, and Josiah A. Clark, twelve good and lawful men, residents of the county, and taxable therein, who are taken by the parties, and duly sworn according to law, and having heard the evidence, arguments of counsel, and the charge of the court, (to the giving of which charge the defendants excepted) they retire under charge of a sworn officer, to consult of their verdict; and now return into court the following verdict, to wit: We, the jury, find for the plaintiffs, and assess their damages at thirteen thousand three hundred and sixty-five dollars and thirty-two cents.

WILLIAM D. HORNER, *Foreman.*

And afterwards, on the 24th day of May, 1861, the same
399 being the 17th judicial day of the May term of said court, the following proceedings were had herein, to wit:

Come the parties, and the defendants move the court herein for a new trial, and file their reasons therefor in writing, to wit:

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v.
THE CITY OF AURORA, and THE OHIO and Mississippi Railroad Company. } Civil action.

Now comes the said defendant, the city of Aurora, and moves the court for a new trial in said cause for the following reasons, to wit:

1st. Because the verdict of the jury is contrary to the evidence in the cause, and contrary to law.

2d. Because the court erred in giving the charges, which were given in said cause.

3d. Because the erred in refusing to give the charges asked for by the defendant.

4th. Because the court erred in giving the charges touching the law in said cause.

HOLMAN & HAYNES,
Attorneys for the City of Aurora.

And the court, being sufficiently advised of the premises, overrules said motion; to which ruling of the court the said defendant, at the time, excepted.

400 And the plaintiffs now move the court for a judgment on the verdict returned herein.

It is therefore, considered by the court that said plaintiffs recover

of and from said defendants the said sum of thirteen thousand three hundred and sixty-five dollars and thirty-two cents, their damages, assessed by the jury, and their costs and charges herein laid out and expended.

And the defendants now file a bill of exceptions herein, in these words, to wit:

CHARLES W. WEST and JOSEPH F. TORRENCE
vs.
THE CITY OF AURORA and THE OHIO AND MISSISSIPPI Railroad Company. } Civil action.

Be it remembered, that on the 23d day of May, 1861, being the 16th judicial day of the Dearborn circuit court, the above entitled cause came on for hearing in said court before the court and a jury. Whereupon the said plaintiffs, for the purpose of sustaining the issues in their behalf, introduced the following evidence, to wit: The bond, a copy of which is set forth in the plaintiffs' complaint, to wit, (bond No. 1 set out;) also the forty-nine other bonds, referred to in said complaint, of the same tenor, which it is agreed are not to be copied into this bill of exceptions; also the coupon, a copy of which is set forth in the first paragraph of said complaint, (here set
401 forth, coupon No. 1 inserted before;) also the coupons, copies of which are filed with said complaint, which it is agreed shall not copied into this bill of exceptions; also the following evidence, to wit, the order to subscribe and the subscription, which is in the handwriting of John D. Haynes, are to be here set out. The said order referred to above reads as follows, to wit:

CITY OF AURORA, *Dearborn county, Indiana:*

At a meeting of the city council of the city of Aurora, held at the council hall, in the city of Aurora, Sept. 28th, 1850, the following order was unanimously adopted:

Ordered by the city council of the city of Aurora that whereas the qualified voters of the city of Aurora, at the annual election of said city, held on the first Monday in April, 1849, in and for said city of Aurora, signified, by a large majority of the votes cast at said election, that the city council of said city shall subscribe, on behalf of said city, fifty thousand dollars in the capital stock of the Ohio and Mississippi Railroad Company, in pursuance of the 18th section of the act of the general assembly of the State of Indiana granting to the inhabitants of the town of Aurora a city charter, approved February 14th, 1848: John D. Haynes, mayor of said city, is, therefore, hereby authorized and required to subscribe, on behalf of said city of Aurora, on the stock books of said railroad company, one thousand shares, being fifty thousand dollars, in the capital
402 stock of the said Ohio and Mississippi Railroad Company, to be expended in the construction of said railroad in and west of said city of Aurora.

I, Samuel J. Heald, clerk of said city of Aurora, do hereby certify that the above and foregoing is a true, full, and complete copy of the order of the city council as appears upon the record of said city.

Witness my hand this 28th day of September, A. D. 1850.

SAM. J. HEALD.

In pursuance of the foregoing order of the city council of the city of Aurora, I, John D. Haynes, mayor of said city, do hereby subscribe, on behalf of said city of Aurora, in the capital stock of the said Ohio and Mississippi Railroad Company, one thousand (1,000) shares, $50,000.

In witness whereof, I, John D. Haynes, mayor of the city of Aurora, have hereunto set my hand and affixed the seal of said city of Aurora, at said city of Aurora, this 28th day of September, 1850.

JOHN D. HAYNES, *Mayor.*

And the statute of the State of New York, which is set out in the plaintiffs' complaint.

Also the following evidence:

Charles W. West, one of the said plaintiffs, being sworn, testifies as follows:

Charles West; I am one of the plaintiffs; plaintiffs are holders of the bonds and coupons offered in evidence; we purchased them in good faith and paid for them, in money $25,000, and the balance in drafts at 60 days and 65 days after their date, which have been fully paid. We had no knowledge or information of any defect in
403 the bonds whatever; we had no information or knowledge that the bonds were merely deposited with the railroad company for safe keeping, and not for sale. Witness says he had no information of the matters and things set up in the defendants' answer. I negotiated the purchase of the bonds and done the business myself I am one of the plaintiffs; I reside in Cincinnati, Ohio, and have resided there 20 years and over. We bought the bonds in the spring of 1854, and interest was paid 1st of January, 1855, part by Mr. Cobb, and balance by Quincy, the mayor of Aurora. My recollection is that some of it was paid by citizens of Aurora, and Finney, the mayor of the city of Aurora, paid part of it; Mr. Cobb and others paid one-half or more of it, and Finney paid the balance. I do not know positively that the city of Aurora ever paid any of the interest. Mr. Finney was introduced to me as mayor of the city, and he paid me. I do not know that H. L. Dean, T. J. Taylor, Cobb paid the interest; I have heard so; from what I have heard since, I should judge the money was paid for them, by what I have heard since. The O. & M. R. R. Co. has existed since 1848 or 1849. I was elected a director in 1850, I think, and I was a director then until the spring of 1856. The board of directors met about once a month, and sometimes oftener, in the years '50, '51, '52; I was not a very regular attendant, I think; I was present at more than one-
404 half of the meetings. I first saw the bonds a few days before I bought them, in possession of the secretary or treasurer of

the co. I don't know anything about who got up the form of the bonds. I do not remember of the board ordering the bonds got up, or any applications for the issue of *the issue of* the bonds. I do not think I ever heard the bonds mentioned until two or three months before I bought. I was then informed the co. had these and other bonds for sale. I had the same opportunity as other members to know about bonds, except officers. I was on the executive committee to locate road, but was not an active member, and was not clerk or president of committee. I took no active part on committee. The committee had the principal management of the road. There was five members of committee; a majority, I suppose, was a quorum. I don't know how often the committee met. I bought bonds in spring of 1854. I have heard that city had subscribed, but heard nothing about bonds. I did not ask Mr. Cobb or Mr. Goff to get bonds from city. I don't think I was present when resolution was adopted to guarantee the bonds. I inquired of Judge Coffin, my attorney, in regard to bonds. He said he had examined the subject. He told me that they were right. Judge Coffin was also the attorney for the co. When I first heard of bonds it was said they were for sale; we
405 had money and thought it good investment. I heard so from Mr. Hall, who was then president of the railroad company, that the bonds were for sale. I do not know who took the bonds to Cincinnati. I did not go to Aurora. I did not say I would not take the bonds unless the co. would guarantee the payment, and did not suggest the guarantee. Judge Coffin, I think, was the financial commissioner, and sold the bonds with the president. I think the board never knew the bonds were merely held in trust; I never knew it; I never heard that the bonds were merely held in trust by the co. for three months previous to sale. I heard about bonds a good deal; the subject of raising money was up frequently. I cannot say at whose instance the bonds were guaranteed; I made the purchase of president and financial commissioner. I sold some real estate to company, about 500 feet for $47,000, from Front street to low-water mark, including mill property; I do not recollect whether real estate was sold before or after bonds were bought. I think they owed me about $50,000 at the time I bought the bonds, which has since been paid. The president and financial commissioner did most of the business. I never conversed with board of directors about bonds; I did not hear from board of directors that they had purchased the bonds from the city of Aurora; I don't know that I ever heard that they had purchased bonds, but yet I knew they had them for sale; I never
406 heard from any person that they had purchased, but I heard that they had taken them in payment for a subscription of stock. I never heard that the board had authorized the president or financial com. to make such purchase, or anybody else. The record of com. was kept in Cin'ti. I was frequently there from 1850 to 1854. The first talk we had about purchase of bonds I did not see them; they were in New York, I think; I saw them before I purchased them; I understood from that com. owned them, and they were for sale. There were 21 directors; 7 was a quorum; most of the

time a majority lived in Cincinnati. I had a dozen—may be more—interviews about the bonds with president and financial commissioner before I purchased them. I bought the bonds and paid the money for them. I got my pay for my land through the city of Cincinnati. I do not think Tinney said on whose account he paid the money.

Plaintiff re-examination.

The plaintiff got $3,000 for the interest coupons in the year 1855, due January 1st, 1855. Part of this was paid by John Cobb, and the balance of that year's interest was paid to me in Cin'ti by S. P. Tinney, mayor of the city of Aurora. Mr. Tinney was introduced to me by William Glenn, of Cincinnati, as the mayor of Aurora, and he paid me the balance of the interest. I first saw these bonds only a few days before I bought them. At the time I bought them, they
407 were there before me, in the possession of the president of the railroad and the financial commissioner. The subject of raising money by the railroad company was frequently up, and these bonds were spoken of as for sale at almost every time I met the president and the financial commissioner. The president and financial com. that O. & M. R. R. Co. had the bonds, and that they (the R. R. Co.) owned them and had them for sale. I bought them and paid the money for them, and the company paid me for my real estate. There was no real estate trade in any way connected *in any way* with the purchase of these bonds by the plaintiffs. Nothing was said, at the time the money was paid to me by Tinney, as to on what account or on whose account he paid the same. The Ohio and Mississippi R. R. Company is finished and completed from Cincinnati, to and through Lawrenceburgh and the city of Aurora, to Vincennes and St. Louis.

And the said plaintiffs, during the examination of said Charles W. West, in response to which a part of said evidence was given, asked the following questions, to wit: What information had you at the time of the purchase of the bonds, in regard to the following matters, to wit:

They had no notice whatever that a majority of the qualified voters of said city of Aurora had not, at an annual election in , expressed upon their tickets that they were in favor of subscription of
408 $50,000 by said city, to the capital stock of the said Ohio and Mississippi Railroad Company; or that the said council of said city subscribed for the said stock without authority, or that said subscription was made on said bonds and coupons delivered to said company, upon the assurance of said company that said city should never be called upon to pay said bonds or coupons, or that if said company sold or hypothecated said bonds, that she, the company aforesaid, should pay the interest on the same, or that as soon as said road was completed the said bonds and coupons should be surrendered up to said city by said company, and the stock subscribed for by said city should be surrendered to be cancelled; or that said stock was subscribed or said bonds and coupons were issued upon any such consideration, representation, or assurance as in said paragraph alleged, or

upon any assurance by said company that preliminary surveys and estimates had been made by said company of the cost of the construction of said road and the profits which said road would produce, and that the stock of said company, upon the completion of said road, would be above par, and without any notice that said company had not purchased said bonds of said company, (city?)

Which question, at the time, the defendant objected to for the following grounds of objection: 1st. Because the question was leading, and, secondly, because the question was immaterial; which ob-
409 jection the court overrules, and permitted the witness to answer the question, which answer is as follows:

The plaintiff had no knowledge or information of any defect in the bonds whatever; he had no knowledge that the bonds were merely deposited with the railroad company for safe-keeping and not for sale. The plaintiff had no knowledge or information as to either of the matters and things set up in the defendants' answer. To which decision of the court, in permitting said question to be asked and allowing said evidence to go to the jury, the defendants, at the time excepted, and here the plaintiffs rested their cause.

And thereupon the said defendant introduced the following evidence, to wit:

H. L. Dean, being sworn, testified as follows:

I paid, by S. P. Tinney, $600 on the interest on said bonds; it was not paid by the city nor repaid by the city; the money was paid in 1854 and 1855, I don't recollect which—March, I think. When I paid the company $600, in 1854, the company *the company* said the bonds and coupons were not there, they had been sent to New York, and they received the money to forward for him; I had agreed to pay the money on conditions, which have not been complied with. The conditions were that we should have the stock which the city subscribed, but the city did not furnish it, because the company failed to issue it to them until it was not worth more than 5 cents on
410 the dollar. At the time I paid the $606 to the company on the interest, I understood that they were not then the holders of the bonds.

John Cobb, being sworn, testified as follows:

I was a director of the O. and M. Company from 1850 to 1856; I first saw the bonds in blank in the custody of the officers of the railroad company; at the instance of the president or secretary of the company, I took them to Aurora and delivered them to the officers of the city; after they were signed I, together with Mr. Tinney, mayor of the city, took them back to the office and handed them to the secretary of the company. Neither myself nor Tinney were authorized to sell the bonds, nor were we, either of us, acting for any person authorized to sell them. They were never afterwards returned to the city of Aurora, to my knowledge; if they had been I should have known it, as I suppose. The officers of the railroad company gave a receipt for the bonds, as for so many bonds received from the city of Aurora. The reason that the receipt was given was that we demanded the stock and it was not given and we required the receipt. I do not

know of any authority being given by the city of Aurora to sell the bonds; neither Tinney or myself professed to have any authority to sell them at the time we delivered the bonds to the company.

411 I never heard that any person was authorized by the board to purchase the bonds of the city, although such authority might have been given in my absence. At the time the bonds were delivered over to the company, nothing was said about our authority to sell, or of the authority of the company to buy said bonds. I suppose the object of the delivery of the bonds to the R. R. Co. was to realize on them. The date of the receipt was in June, 1853. It was simply a receipt for so many bonds deposited with the company. If we had gotten the stock we would have taken it back with us and delivered it to the city. I paid Mr. West $1,800 on two different occasions, being interest for the year on a part of these bonds; one payment was paid to Mr. West, personally, the other to his agent. I took the bonds to Aurora to get them executed.

Isaac H. Carbaugh. The city of Aurora never paid any interest on the bonds so far as I am informed; I had an opportunity of knowing of the financial condition of the city, and a good deal in connection with its business.

In 1853 these bonds were presented to the city council; the council hesitated some time about signing them; concluded at last that if they could get any set of men to step in and agree to pay the interest and the bonds they would let them go; concluded this arrangement

412 with Taylor, Dean, and Cobb, and when that arrangement was completed the bonds were issued and placed in hands of Cobb & Tenney; Tenney was then the mayor, and continued so for five or six years, but was out of office one year; what year that was I do not recollect.

Location of road.

Also the following evidence, to wit, the following exemplifications of the records of the Ohio and Mississippi Railroad Company:

Pursuant to call, by order of the president, the members of the board of directors of the Ohio and Mississippi Railroad Company met at their rooms on Tuesday, the 6th day of July, 1852. The following resolution was offered:

Resolved, (Seymour & Co. concurring,) That the following be adopted as the centre line of the Ohio and Mississippi railroad, within the limits specified; beginning at a point on the towing path of the White Water canal, designated by a stake marked 32, being about 50 feet westerly from the abutment of Stone bridge; thence, following the towing path of said canal, with such directions as may be necessary, to the tunnel at North Bend; thence, following the slope of the Ohio river bank to the crossing of the Miami river, at a point near

413 Scott Harrison's residence; thence on a direct course to the city of Lawrenceburgh, passing through William street in said city; thence in the same general direction to the city of Aurora: which was unanimously adopted.

Resolved, The executive committee have full power to locate the road from Aurora to any point in Jackson county: which was unanimously adopted.

Meeting of the financial and executive committee, held July 23, 1852. The chief consulting engineer then introduced the subject of location of the road beyond Aurora, Indiana, to what point it was located by the directors at their last meeting, and then referred the subject of further location of the road to the crossing of the Jeffersonville and Columbus railroad to this committee. The location of the road to Aurora, is as follows :

Resolved, (Seymour & Co. concurring,) That the following be adopted as the location of the centre line of the Ohio and Mississippi railroad, within the limits specified; beginning at a point on the towing path of the White Water canal, designated by a stake marked 32, about 51 feet westerly from the abutment of Stone bridge; thence, following the towing path of said canal, with such deviations as may be necessary, to a point near the tunnel at North Bend; thence
414 following the slope of Ohio river bank to the crossing of Miami river at a point near Scott Harrison's residence; thence on a direct course to the city of Lawrenceburgh, passing through William street in said city; thence, in the same general direction, to the city of Aurora.

The following was unanimously adopted by the executive and financial committee as a continuation of the line to the Madison and Indianapolis railroad:

Thence following the valley of South Hogan creek to the confluence of Whittaker fork; thence with said Hogan creek; thence up the valley of said Whittaker fork; thence to its head; thence passing in a direct course to the head of Castator creek, and descending the valley of said creek to the crossing of Laughery creek; thence following the valley of Plum creek, and its tributaries, to the crossing of the Michigan plank road, passing as near the town of Versailles as the nature of the country will admit; thence pursuing a direct course to the crossing of Otter creek, in section No. 8; thence following the same general course to the intersection of the Madison and Indianapolis railroad at a point about one and a half miles north of the town of Vernon. This distance being measured along the route of the Madison and Indianapolis railroad.

CITY OF CINCINNATI, *State of Ohio, Hamilton county, sct:*

415 Before me, the undersigned, a notary public in and for said county, on this day personally came Samuel Frenor, secretary of the president and directors of the Ohio and Mississippi Railroad Company, who being by me duly sworn, says that the above and foregoing transcript from the records of said company embraces full, true, and complete copies of the original resolutions and orders now remaining of record in the office of said company ; that the foregoing transcript is a full, true, and complete copy of the several orders and resolutions therein set forth, the originals of which are of record in the records of said company, in the city of Cincinnati aforesaid, and

have been fully and truly copied and transcribed from the records of said company aforesaid, and are true and full copies of the original resolutions.

He further says that he is the secretary of the president and directors of the Ohio and Mississippi Railroad Company, and as such has the legal custody of the records aforesaid, being the records of the acts and proceedings of said company.

He further says that the original resolutions and orders aforesaid, of which the foregoing transcript embraces true and full copies as aforesaid, have remained unaltered from their date, to the best of his knowledge and belief. And further saith not.

SAM'L TREVOR.

Subscribed and sworn to before me by the said Samuel
416 Trevor, secretary as aforesaid, on this the 16th day of May, 1861, at the city of Cincinnati aforesaid.

In witness whereof, I have hereunto set hand and seal of office on the day and year last above written.

[SEAL.] JOSEPH McDOUGAL, *Notary Public.*

And here the defendant, the city of Aurora, rested her cause.

The plaintiffs then offered in evidence the following records, to wit:

JUNE 2D, 1853.

L P. Tenney, Esq., mayor of Aurora, Indiana:

DEAR SIR: I am informed that the bonds of the city of Aurora are ready for delivery. Will you be so good as to send them up immediately, as we are closing our books for this year, and desire to have the entries made this week.

Yours truly,

H. H. GOODMAN, *Sec.*

STATE OF OHIO, *Hamilton county, set:*

Before me, the undersigned, commissioner of deeds and for the State of Indiana, in and for the county of Hamilton and State of Ohio, personally came Samuel Trevor, secretary of the president and directors of the Ohio and Mississippi Railroad Company, who being by me first duly sworn, says that he is the secretary of the president and directors of the Ohio and Mississippi Railroad Company aforesaid, and as such has the legal custody of all the records and written documents, and the correspondence of said company from its organization to
417 the present date; and that among the records of said company are the letter-books, containing copies of the letters and correspondence of said company, by and through its officers and agents; and that one of said letter-books is now before him, being the book containing copies of letters written by H. H. Goodman, in the year 1853; and that the above and foregoing copy of a letter from the said H. H. Goodman, secretary as aforesaid, is found upon said letter-

book, on page 19, and is a true and full copy and transcript of the said letter as the same now remains copied upon page 19 of said letter-book now remaining in the office of said company, the original copy of which said letter has been and is truly copied and transcribed from the records of said company aforesaid.

He further says that the said original record of said letter, of which the above is a true copy, has remained unaltered from their date, to the best of his knowledge and belief.

SAM'L TREVOR, *Sec'y.*

Subscribed and sworn to by said Samuel Trevor, the secretary aforesaid, at Cincinnati, Ohio, this 2d day of May, 1861.

Witness my hand and official seal, at Cincinnati, Ohio, the day and year last aforesaid.

ABRAM BROWER,
Commissioner of Deeds in Ohio, for Indiana.

A special meeting of the board of directors of the Ohio and Mississippi Railroad Company was held at their rooms, in Cincinnati, on Saturday, the 21st day of May, 1853, pursuant to notice duly
418 served on said directors.

The board was called to order at 3½ p. m.

Judge Ellis presiding. The following members were present, Messrs. Coffin, Cobb, West, Hall, Stetson, Beeder, Baker, Phillips, Gaff, Cochran, and Ellis.

Mr. Hall offered the following:

Whereas the speedy construction of the road will require an earlier payment of the corporate subscriptions than was originally contemplated, thereupon be it remembered (resolved) that the counties of Daviess, Knox, Jennings, and Ripley be earnestly requested to issue the entire amount of bonds requisite to make full payment of their several subscriptions.

Adopted unanimously.

STATE OF OHIO, *Hamilton county:*

Before me, the undersigned, commissioner of deeds for Indiana, in and for Hamilton county, Ohio, on this day personally came Samuel Trevor, secretary of the president and directors of the Ohio and Mississippi Railroad Company, who being by me duly sworn says that the above and foregoing transcript from the records of said company embraces full, true, and complete copy of the original resolution and order now remaining of record in the office of said company; That the above and foregoing transcript is a full, true, and complete copy of the order and resolution therein set forth,
419 as having taken place and been ordered entered on the 21st day of May, 1853, the original of which is of record in the records of said company, in the city of Cincinnati aforesaid, and has been truly and fully transcribed from the records of said company aforesaid, and is a full and true copy of the original resolution. He further says that he is the secretary of the president and directors

of the Ohio and Mississippi Railroad Company, and as such has the legal custody of the records aforesaid, being the records of the proceedings and acts of said company. He further says that the original resolution, entry, and order aforesaid, as copied above, and of which the above and foregoing transcript is a full and true copy, have remained unaltered from the date thereof, to the best of his knowledge and belief. And further says not.

SAMUEL TREVOR, *Sec'y.*

Subscribed and sworn to before me by the said Samuel Trevor, the secretary as aforesaid, on this the 21st day of May, 1861, at the county of Hamilton and city of Cincinnati aforesaid.

In witness whereof, I have hereunto set my hand and affixed my seal of office, on the day and year last above written, and at the city of Cincinnati aforesaid.

[SEAL.] ABRAM BROWER,
Commissioner of Deeds for Indiana.

420 And recalled Charles W. West, who testified as follows, to wit:

Charles W. West recalled.

Said John Cobb is mistaken in saying that the interest of 1854 was paid to him; plaintiff did not own the bonds until spring of 1854, and never received but payment of interest that of 1855; which was all the evidence given in the cause.

And thereupon the defendant, the city of Aurora, asked the court, at proper time, to charge the jury as follows, to wit:

To entitle the plaintiffs to recover in their action you must be satisfied, from the evidence, that the bonds were actually sold to the railroad company by the city of Aurora, or by some person or persons whom she had authorized to sell the same, and that the railroad company * * . If the subscription of fifty thousand dollars made by the city council of the city of Aurora was made prior to the time when the Ohio and Mississippi railroad was located to the city of Aurora, or through or from the same, you should find for the defendant, the city of Aurora. If at the time the bonds were issued and sold (if you find the same were sold) by the said city of Aurora, as alleged in the plaintiffs' complaint, the Ohio and Mississippi Railroad was not surveyed or located to the city of Aurora, you should find for the defendant, unless the bonds were actually sold by the city of Aurora, as alleged in the plaintiffs' complaint, the
421 plaintiffs cannot recover. But the court refused to give the said charge or either of them, and refused each charge, but charged the jury as follows, to wit:

Charge of the court.

WEST and TORRENCE
vs.
THE CITY OF AURORA.

If you believe from the evidence that the plaintiff purchased the bonds from the railroad company in good faith and paid a valuable

consideration, and without any knowledge on their part of the city of Aurora having any objection to the payment of said bonds, or of having objection to the manner in which the city of Aurora made said bonds, you should find for the plaintiff.

If the plaintiffs had knowledge that the proceedings of the citizens of Aurora were irregular in any of the things that were necessary for them to do to perfect these bonds, you should find for the defendant.

It is none of your business whether the citizens of Aurora are rich or poor, or whether they are honest or dishonest, or whether they are industrious or lazy—all of this has nothing to do with this cause—you are to try this cause according to the law and the evidence.

You are the exclusive judges of the credibility of the witnesses, and in determining the weight of evidence you should consider the intent of the witnesses, if they have any, in the result of the
422 suit, and manner of testifying.

And the said city of Aurora excepted at the time to the decision of the court in refusing to give the charges aforesaid, and in refusing to give each one of said charges, which the court refused to give as aforesaid; and also at the time, the city of Aurora excepted to the decision of the court in giving the charge to the jury, which was given as aforesaid. The city of Aurora having excepted as aforesaid to *to* the refusal of the court to give each one of said charges at the time of said refusal, also excepted to the giving of said charge given as aforesaid, at the time the same was given. And the jury having retired to consider of their verdict, and returned into court the following verdict, to wit, (inserted before.) Whereupon the city of Aurora moved the court for a new trial, for the following reasons, to wit, (inserted before,) which motion the court overruled, and pronounced the following judgment on the verdict, to wit, (inserted before;) to which opinion of the court in overruling the motion and in pronouncing the judgment aforesaid, the said defendant excepted and objected, and prays that this his bill of exceptions may be signed, sealed, and made a part of the record, which is accordingly done.

(Signed) R. D. LOGAN.
May 24, 1861.

And prays an appeal to the supreme court of Indiana.

423 STATE OF INDIANA, *Dearborn county, sct:*

I, Samuel L. Jones, clerk of the Dearborn circuit court, do hereby certify that the above and foregoing contains a full and true transcript of the record and judgment in the above-entitled cause, as fully as the same remains of record in said court.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said court, at my office, in Lawrenceburgh, this 9th day of November, A. D. 1861.

[SEAL.] SAMUEL L. JONES, *Clerk.*

State of Indiana, supreme court, Nov. term, 1862.

THE CITY OF AURORA, impl'd with the Ohio and Miss. Railroad Co.,
vs.
CHARLES W. WEST and JOSEPH TORRENCE.
} Appealed from the Dearborn circuit court.

The appellant, by Holman & Haynes and Jer. Sullivan, her attorneys, says that there is error in the record and proceedings aforesaid in this, to wit:

1st. The court erred in overruling the demurrer to the complaint; also in overruling the demurrer to the 1st and 2d paragraphs of said complaint.

424 2d. The erred in sustaining the demurrer to the 2d, 3d, 4th, and 6th paragraphs of defendants' answer.

3d. The court erred in overruling the demurrer of the defendants to the 2d, 3d, and 4th paragraphs of the plaintiffs' reply, and to the 5th and 7th paragraphs of the defendants' answer to complaint.

4th. The court erred in allowing illegal and improper testimony to go to the jury against the objection of the defendant.

5th. The erred in refusing to give the instructions to the jury asked for by the defendant.

6th. The court erred in the instructions given to the jury.

7th. The court erred in overruling the motion for a new trial.

8th. The court erred in rendering judgment for the plaintiffs.

Wherefore appellant prays that s'd judg't be reversed, &c.

HOLMAN & HAYNES,
JER. SULLIVAN,
Att'ys for Appellants.

And afterwards, to wit, on the 2d day of July, A. D. 1863, being the 50th day of the May term, 1863, of said supreme court, before the judges aforesaid, come the parties, by their attorneys, and by agreement this cause is submitted to the court; and the court not being sufficiently advised in the premises, take time to advise therein.

425 State of Indiana, supreme court, May term, A. D. 1864.

SECOND DAY, *May 24th*, 1864.

Present, the honorable James L. Worden, ch. j.; James M. Hanna, Samuel E. Perkins, Andrew Davison, judges.

THE CITY OF AURORA *et al.*
vs.
CHARLES W. WEST *et al.*
} Appeal from the Dearborn C. C.

Now come the parties, by their attorneys, and the court being sufficiently advised in the premises, give the following opinion and judgment, pronounced by Perkins, judge: This suit was brought in the court below by West & Torrence to recover the amount due upon the coupons falling due in 1858–'59–'60–'61, attached to fifty bonds, of 1,000 dollars each, issued by the city of Aurora, in payment of the stock of the Ohio and Mississippi Railroad Company, which the mayor

of the city had subscribed. These bonds bear date the first day of January, 1852, but they were not actually issued till about the 1st of June, 1853, some 18 months after they bear date. The following is a copy of one of the bonds and one of the coupons :

No. 1. United States of America. No. 1.
State of Indiana, $1,000. City of Aurora, $1,000.

Ohio and Mississippi Railroad Company.

The city of Aurora acknowledges itself indebted to the Ohio and Mississippi Railroad Company, or bearer, in the sum of one
426 thousand dollars, negotiable and payable at the North River Bank, in the city of New York, twenty-five years from date hereof, upon the presentation and delivery of this certificate, bearing an interest of six per cent. per annum, payable annually on the first day of January, at said bank, in the city of New York, upon presentation and delivery of the proper coupon hereto attached, signed by the clerk of said city; and at all times the holder shall have a lien on the stock of said city in said company, for which this is received in payment, and may exchange the same for a like amount of said stock at any time before the first declaration of cash dividends, and be substituted as stockholder in place of said city upon surrender of this bond. This bond is issued in part payment of a subscription of fifty thousand dollars by the said city of Aurora to the capital stock of the Ohio and Mississippi Railroad Company, by order of the common council of the city of Aurora, on the 28th of September, 1850, in pursuance of the 18th section of an act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter, passed by the general assembly of the State of Indiana, and approved February 15th, 1848.

Witness the seal of said city of Aurora and the signature of the mayor and clerk of said city this first day of January, 1852.

[SEAL.] SOLOMON P. TENNEY,
Mayor of the City of Aurora, Indiana.
WILL. W. CONWAY,
427 *Clerk of the City of Aurora, Indiana.*

The following is a copy of the coupons:

No. 1.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the first day of January, 1858, being annual interest on bond No. 1.

$60. WILL. W. CONWAY, *Clerk.*

These bonds purport to be issued under the 18th section of the city charter of the city of Aurora. That section is in these words: "The said city council, whenever a majority of the qualified voters

of said city require it, shall have power, and they are hereby authorized, to take stock in any chartered company for making roads to said city, or for lighting or watering said city; provided that no such stock shall be subscribed on the part of the city until a majority of the qualified voters thereof have signified their assent thereto by expressing upon their ticket, at any annual election, that they are in favor of the subscription for such stock by the city council. And to raise funds for the payment of such stock, the said city council shall have power and authority to make and sell their bonds, under the seal of said corporation, payable in such time as they may deem proper and expedient, and bearing interest at the rate of six per cent. per annum, payable annually; and therein pledge to the holder of such bonds that the stock so taken, with all the dividends thereon
428 accruing, shall be held and finally bound for the payment of the said bonds and accruing interest on the same, and that the interest coupons attached to said bonds shall be received at all times when due for the payment of all taxes due to said city; the amount of stock subscribed in any one chartered company not to exceed fifty thousand dollars."

The city officers having subscribed for $50,000 of the capital stock of the company, they did, in June, 1853, issue these bonds. They were not sold in the market, or in any way to raise money for the payment of the stock, but they were, on or about the 3d day of June, delivered by the city officers to the Ohio and Mississippi Railroad Company, in payment of the subscription. The stock was not issued to the city until long afterwards. It was when issued in such form that it was afterwards returned to the Ohio and Mississippi Railroad Company and cancelled, and no stock has ever since been issued to the city. Among the grounds of defence relied on by the city of Aurora was this: That the Ohio and Mississippi Railroad Company was not a chartered company for making a road or roads to said city of Aurora, or for doing any other act or thing touching said city, or for the promotion of the local interest thereof; and the said defendants and the city of Aurora aforesaid specially aver that on the day of September, 1850, when the said subscription was made
429 by the said city council of the city of Aurora for 50,000 dollars of the capital stock of said Ohio and Mississippi Railroad Company, the road of said company, that is to say, the Ohio and Mississippi railroad, was not located to or through said city; and the Ohio and Mississippi Railroad Company was not on the day of September, 1850, the day upon which said subscription was made, constructing, nor had said company at any time before that day been engaged in the construction of a railroad, or any other road to, or through, or from the said city of Aurora, nor was the said company required by their act of corporation to construct a road to, through, or from said city. All which was well known to Charles W. West, one of the plaintiffs, who was then, had been before, and continued afterwards to be, a member of the board of directors of said Ohio and Mississippi Railroad Company. On the trial the court charged the jury, among other things, as follows:

"If you believe from the evidence that the plaintiff purchased the bonds from the railroad company in good faith, and paid a valuable consideration, and without any knowledge on the part of the city of Aurora having any objections to the payment of said bonds, or having objections to the manner in which the city of Aurora made said bonds, you should find for the plaintiff."

430 This was excepted *excepted* to. It appeared in evidence that the plaintiff, West, was a director and active member of the corporation, as alleged in the paragraphs above quoted. There was a judgment below against the city. In examining the case, we may first properly ascertain the character of these corporation words. They are in legal effect the promissory notes of the city. It is true, they are under seal, and could not, by strict common law rules, come within the definition of promissory notes, but they are now treated as such. If they had been issued, payable generally, they might not have been governed by the law merchants in this State. Only bills of exchange and such notes as are payable at a bank in this State, are by the laws of this State, governed by the lex mercatoria; 1 Blkf, 81, 13 Ind., 521.) But the bonds or notes in question are payable in New York. They are, therefore, as against the maker of them, New York contracts; they are governed by the law of New York. This principle of law was settled in England, by the case of Robinson *vs.* Bland, 1760, 1 Wm. Black, f'd Rep., 234, 256; S. C. 2 Burr, 1,077. In that case Sir John Bland drew a bill at Paris upon himself, payable in England, for money lost at play in Paris. It was in legal effect his promissory note executed in Paris, but

431 payable in England. Suit was instituted on the bill in England. The question was whether the law of France or England was to determine the character of the paper. The case was twice argued. On the first argument Dennison, J., said "this case and the law upon it are quite new to me; I can form no opinion upon it." On the second argument Lord Mansfield said, "the general rule established ex comitate et jure gentium is, that where the contract is made and not where the action is brought, is to be considered in expounding and enforcing the contract." But this rule admits of an exception, when the parties (at the time of making the contract) had a view to a different kingdom. Hubems says, (Prael 1, tit. 3, p. 341:) "Contracts are to be considered according to the place wherein they are to be executed; as, therefore, the bill in the present case is made payable in England, it is entirely an English transaction, and to be governed by the local law." Dennison, J., said "It is a plain case, and must be ruled by the laws of England." Wilmot, J., said "the place where the money is to be paid must guide the law. It is determined as to usurious contracts in Ireland, P'r Chanc., 128. Clearly, therefore, the law of England must be the rule, as the money was made payable here." To the same effect, in Indiana State Bank *vs.* Bowers, 8 Blkf., 72; Hunt *vs.* Standart, 15 Ind., 33; Rose et al., *vs.* The Park Bank, 20 Ind., 94; Buler *vs.* Myer. 17 Ind., 77. By the laws of New York, bonds like those in suit are governed by

the law merchant. This is shown by the statutes of New York, set out in the record and the decisions of her courts. Gould *vs.* Town of Sterling, 10 Am. L. Reg., note &c.; S. C. 23, N. Y., Rep., 439, 464; Bank of Rome *vs.* Village of Rome, 19 N. Y., 20 sec., 19 Ind., 693. Being mercantile paper, the next is, To what defences is it subject? As a general proposition, it may be laid down that mercantile paper made void ab initio by statute, is void in the hands of a bona fide holder, Story on bills, sec. 189; so such paper as a general proposition, we take it, cannot be enforced, even by a bona fide holder, against infants, lunatics, married women, and alien enemies, they not having capacity to bind themselves by such contracts, Story on bills, sec. 81, et seq., so it has been held that where a corporation issued commercial paper, not apparently within the scope of its powers, such paper was void in the hands of a bona fide holder, if there could be such. Smead *vs.* The Indianapolis, &c., Co. 11, Ind., 104; Storm *vs.* The Town of Genoa, 23 N. Y., 450; id. 549; see also 14 Cal. Rep., 367; 16 id., 626; 18 id., 613; 20 id., 103. See Moran *vs.* Com'r Miami Co., 2 Black (U. S.) Rep., 722. But we need not now express an opinion on this point, for the plaintiffs in the case at bar were not, as will appear further on, bona fide holders of the bonds in suit; so that if these bonds were irregularly issued, the plaintiffs were chargeable with notice thereof. Aurora was, and

433 is, a municipal corporation, and, therefore, on general principles of law, could not, without special authority, subscribe stock and issue bonds in payment of it in a railroad corporation; Grant on Corp. pp. 60, 276, (side pages.) But such authority is one proper to be conferred upon a city when it is expedient, and when such special authority is given by statute in any case it must be executed as prescribed in the grant, if executed at all. The terms and conditions of the grant cannot, legally, be departed from or exceeded. In the case of the city of Aurora a special authority was given to her by the section of her charter above quoted, to take stock in a railroad running to the city, upon a vote of a majority of her qualified voters. The power of the city, then, to take railroad stock, &c., was granted, subject to two conditions precedent, viz: the existence of a road running to the city, and a vote expressed, &c., of a majority of her qualified voters. The bonds in suit bore a reference upon their faces to the authority under which they were issued, and thus put all persons on inquiry as to the extent of the powers of the agent issuing them, Aurora, then, might take a certain amount of stock, and issue bonds, &c., to a certain amount, in and for a railroad running to that municipal corporation, after a vote, &c. A railroad running through would be a railroad running to the city. The city

434 of Aurora *vs.* West et al., 9th Ind., 74; Von Hostnup et al., *vs.* City of Madison, Dec. term, 1863, Sup. Ct. U. S. That city did, in fact, take stock in the Ohio and Mississippi Railroad Company, and issued bonds in payment of it; some of those bonds passed into the hands of the plaintiff below in this suit, and the questions arise, Was the Ohio and Mississippi Railroad Company a road running to Aurora? Was the taken after a vote as prescribed

by the charter? A determination of the city council that such a vote had been taken, would probably be sufficient evidence of that fact, at least to constitute a prima facie, bona fide purchaser in a given case. The Evansville, &c., R. R. Co. *vs.* City of Evansville, 15 Ind., p. 395. In this case, however, it may be questioned whether the city council ever passed upon this question, a majority of those voting may not be a majority of the voters. But we pass this point and proceed to the other inquiry above propounded, viz: Was the Ohio, &c., railroad a road running to Aurora? How is this inquiry to be determined? If Aurora had been made a point in the charter of the company, that fact would have been an answer to the question. But it was not, hence it could only have been made a road running to Aurora, by the subsequent action of the directors of the corporation, and till such action had been had no absolute subscription of stock in the corporation could have been made by the city. Now, the directors of the Ohio and Mississippi Railroad Company are constituted by the charter the corporation, and the fact appears that,
435 from its origin till after the subscription by Aurora, West, one of the plaintiffs and a partner of the other, was one of the acting directors of the Ohio and Mississippi Railroad Company, and thus a part of the corporation, and such a corporation must be chargeable with knowledge of its line of road. Hence, in point of law, was necessarily chargeable with notice of the time, place, and manner of the location of the road. Aspinwall et al. *vs.* The Ohio, &c., Co., 20 Ind., 492. In view of this fact, then, that the plaintiffs must be charged with notice on the question of location, the instruction given by the court, above quoted, is erroneous, and may have controlled the verdict in the cause. That instruction is erroneous on two grounds; 1st, it goes upon the hypothesis that the bonds may have been illegally issued and the plaintiffs bona fide holders of them, even though that illegality consisted in issuing bonds for stock subscribed in a road not running to Aurora; 2d, it goes upon the hypothesis that the bonds might have been void for illegality of issue, and that fact known to the plaintiffs, and yet the plaintiff be entitled to recover if they did not know that the people of the city were objecting on that ground. This instruction was calculated to mislead the jury. The people would be presumed to be objecting. A point is made as to an error of the court, in allowing an illegal question to be propounded to a witness. Whether the answer to such question
436 should be excepted to as well as the question, to save the error from review in the Supreme Court, we do not decide; but we do decide that the Supreme Court will reverse for the error of permitting such question to be put and answered, when the answer is harmless, nor where, though not harmless, no motion for a new trial on account of the error was interposed. See city of Aurora *vs.* Cobb et al., 21 Ind., 492.

In the case of Culbertson *vs.* Stanley, 6 Blk., 67. Sullivan, judge says, "Nor is it error that he erroneously overruled an objection to a leading question, unless the record show that the opposite party was injured by the answer of the witness." See also 13 Ind.,

377. If the witness did not give the answer it was the design of the plaintiff to draw from him, the defendant has no reason to complain.

It is therefore considered by the court, that the judgment of the court below, in the above-entitled cause, be in all things reversed at the costs of the appellees, and the cause remanded. All of which is ordered to be certified to said court. And it is further considered by the court that the appellants recover of the appellees the sum of dollars for their costs and charges in this behalf
437 expended.

State of Indiana, supreme court.

I, Laz. Noble, clerk of the supreme court of the State of Indiana, certify the above and foregoing to be a true and complete copy of the record, assignment of errors, opinion, and judgment of said court in the above-entitled cause.

In witness whereof, I hereto set my hand and affix the seal of said court, at the city of Indianapolis, this 7th day of November, 1865.

[SEAL.] LAZ. NOBLE, *C. S. C.*

438 Here follows the demurrers of the plaintiffs to the rejoinder of the defendant, (which were sustained, as shown above in this record,) in words and figures, following to wit:

C. W. WEST *et al.*
vs.
CITY OF AURORA.

And now comes the plaintiffs, and as to the 1st rejoinder of the defendant to the plaintiffs' replications, they say that the said rejoinder and the matters and things therein alleged are not sufficient in law to bar the action of the plaintiffs herein; and as to the 2d rejoinder of the defendant to the plaintiffs' replication, they crave oyer of the record and proceedings in the said rejoinder set forth, which is read to them, as follows, (which is the same record of the supreme court of the State of Indiana heretofore set out in this record, and is not here repeated.)

And thereupon the plaintiffs say that the said rejoinder and the matters and things therein alleged are not sufficient in law to bar the action of the plaintiffs herein. Wherefore the plaintiffs pray judgment, &c.

SPOONER,
PORTER,
BROWER,
And THOS. G. MITCHELL,
Pl'ffs' Att'ys.

439 And afterwards, in the same court, and before the judge aforesaid, at the November term thereof for the year one thousand eight hundred and sixty-five, to wit, on the ninth day of November, the following proceedings were had in said cause, to wit:

CHARLES W. WEST and JOSEPH TORRENCE
vs.
THE CITY OF AURORA.
} No. 531.—Assumpsit.

The Hon. David McDonald, judge of the district court, having been of counsel in this cause, is absent.

Now come the parties, and the defendant withdraws the plea of the general issue heretofore filed in this cause, and the said plaintiffs withdraw their third and fourth replications, being the replications to the second plea only of the said defendant, and also withdrew their seventh replication, being the second replication to the fourth plea only, and they withdraw their twelfth, fourteenth, and sixteenth replications, being the second replications respectively to the third, the fifth, and the sixth pleas only of said defendant; and also they withdraw their seventeenth and eighteenth replications, being replications respectively to the seventh and eighth pleas only of said defendant.

440 And thereupon the parties submit this cause for trial for the assessment of damages; and the court having heard all the evidence adduced by the parties, find for the plaintiffs, and assess their damages at the sum of ten thousand five hundred and thirty-four dollars and fifty cents.

It is therefore considered by the court that the plaintiffs do recover from the said city of Aurora, the defendant, the said sum of ten thousand five hundred and thirty-four dollars and fifty cents, ($10,534 50,) together with their costs and charges herein laid out and expended, taxed at dollars.

And afterwards, in the court aforesaid, and before the judge aforesaid, and at the term thereof last aforesaid, to wit, on the ninth day of November, in the year of our Lord one thousand eight hundred and sixty-five, the following proceedings were had in the above-entitled cause, to wit:

And now comes the defendant in this cause and tenders her bill of exceptions, which is signed, sealed, and allowed, and ordered to be made a part of the record in this case.

Here follows the bill of exceptions in words and figures as
441 follows, to wit:

CHARLES WEST and JOSEPH TORRENCE,
partners, &c.,
vs.
THE CITY OF AURORA.

Be it remembered at the trial of this cause, at this term of the court the parties submitted the same to the court upon the record and evidence hereinafter set out, and the plaintiffs offered and gave in evidence the bonds referred to in the first count of the declaration, being fifty in number, from 1 to 50, and which were all exactly alike, except the numbers, and a copy of one of which is hereto attached, and marked A, and made a part hereof; also offered in evidence 150 coupons, being fifty coupons for interest falling due on the 1st of January, 1862, fifty coupons falling due on the 1st of

January, 1863, and fifty coupons falling due on the 1st of January, 1864; all the said coupons being alike, except their numbers and dates of *of* maturity; and it was admitted that the said bonds were
respectively signed by Solomon P. Tenney who was at the
442 date of their execution the mayor of said city, and by Will. W. Conway, who was at the said date the clerk thereof, and were sealed with the seal of the said city, and that said coupons were respectively signed by the said Conway, and were attached to the said bonds; and a copy of one of which coupons is in the first count of the declaration set forth; which was all the evidence in said cause.

And thereupon the defendant objected to the allowance of interest upon the said coupons, which objection was overruled, and the defendant excepted to such overruling, and his exception was allowed; and whereupon the court found for the plaintiffs, and assessed their damages at the sum of $10,534 50, and the defendants objected to said finding on said evidence, and the objection was overruled and exceptions allowed thereto. The defendants also objected to the holding that, upon the record, the plaintiffs were entitled to recover, and his objection was overruled, and exception taken to such overruling and allowed.

All of which is ordered to be made a part of the record in this case.

And it is certified that Judge McDonald, having been of counsel, did not sit or take any part in the cause.

In testimony whereof, the judge of said court has set his
443 hand and seal, and ordered this bill of exceptions to made part of the record, this 9th of Nov., 1865.

[SEAL.] DAVID DAVIS.

Exhibit A referred to in said bill of exceptions.

No. 1. United States of America. No. 1.

State of Indiana, $1,000. City of Aurora, $1,000.

Ohio and Mississippi Railroad Co.

The city of Aurora acknowledges itself indebted to the Ohio and Mississippi Railroad Company, or bearer, in the sum of one thousand dollars, negotiable and payable at the North River Bank, in the city of New York, twenty-five years from date hereof, upon the presentation and delivery of this certificate, bearing an interest of six per cent. per annum, payable annually, on the first day of January, at said bank, in the city of New York, upon presentation and delivery of the proper coupon hereto attached, signed by the clerk of the said city, and at all times the holder shall have a lien on the stock of said
city in said company, for which this is received in payment,
444 and may exchange the same for a like amount of said stock at any time before the first declaration of cash dividends, and be substituted as stockholder in place of said city upon surrender of this bond.

This bond is issued in part payment of a subscription of fifty thousand dollars by said city of Aurora, to the capital stock of the Ohio and Mississippi Railroad Co., by order of the common council of the city of Aurora, on the 28th day of September, A. D. 1850, in pursuance of the 18th section of "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter," passed by the general assembly of the State of Indiana, and approved February 14th, 1848.

Witness the seal of the said city of Aurora and the signatures of the mayor and clerk of said city, this 1st day of January. 1852.

[SEAL.] SOLOMON TENNEY,
Mayor of the City of Aurora, Dearborn County, Indiana.
WILL. W. CONWAY,
Clerk of the City of Aurora, Indiana.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 18 , being annual interest on bond No. —.

$60. WILL. W. CONWAY, *City Clerk.*

445 And afterwards, in the court aforesaid, and before the judge aforesaid, and at the November term thereof last aforesaid, to wit, on the seventeenth day of November, in the year of our Lord one thousand eight hundred and sixty-five, the following proceedings were had in the above-entitled cause, to wit:

Come now the parties, by their counsel, and on motion of T. D. Lincoln, esq., of counsel for the defendant, a writ of error is allowed in this cause to said city of Aurora, and the amount of the bond is fixed at thirteen thousand ($13,000) dollars to operate as a supersedeas bond on its execution and approval by the judge.

446 UNITED STATES OF AMERICA, *District of Indiana, ss:*

I, John D. Howland, clerk of the United States circuit court in and for the district aforesaid, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record and proceedings of said cause as above entitled as fully as the same remain of record in the said circuit court.

In testimony whereof, I do hereunto set my hand and the seal of said court, at Indianapolis, this twenty-first day of December, 1865.

[SEAL.] J. D. HOWLAND, *Clerk.*

447 CLERK'S OFFICES, UNITED STATES COURTS,
Indianapolis, Dec. 27, 1865.

Costs to clerk for this transcript, $125 50.

J. D. H.

448 UNITED STATES OF AMERICA, *to wit:*

The President of the United States to the judges of the circuit court of the United States for the eighth circuit and district of Indiana, greeting:

judgment, in a plea, which is in the said circuit court before you, between Charles W. West and Joseph Torrence, partners, and the city of Aurora, a manifest error hath happened, to the great damage of the city of Aurora aforesaid, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment therein be given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this
449 writ, so that you have the same at Washington on the *on the* 4th day of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may further cause to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fifteenth day of November, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States the ninetieth.

[SEAL.] J. D. HOWLAND,
Cl'k of said Circuit Court.

Filed November 15th, 1865.

J. D. HOWLAND, *Cl'k.*

450 UNITED STATES OF AMERICA:

To Charles W. West and Joseph Torrence, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eighth circuit and district of Indiana, wherein the city of Aurora is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 18th day of November, A. D. 1865.

DAVID DAVIS,
One of the Justices of the Supreme Court.

I acknowledge the delivery to me this day of an original citation, of which the above is a copy.

Nov. 18, 1865.

A. G. PORTER,
Att'y for said West and Torrence.

Supreme Court of the United States.

THE CITY OF AURORA
v.
CHARLES W. WEST *et als.* } 91.

First. The Circuit Court erred in overuling the demurrers to the first and second counts to the declaration.

Second. The court erred in overuling the demurrer to the 1st replication.

Third. The court erred in overuling the demurrer to the 2nd replication.

Fourth. The court erred in overuling the demurrer to the 5th replication.

Sixth. The court erred in overuling the demurrer to the 6th replication.

Seventh. The court erred in overuling the demurrer to the 8th replication.

Eighth. The court erred in overuling the demurrer to the 10th replication.

Ninth. The court erred in sustaining the demurrers to the several rejoinder.

Tenth. The court erred in finding interest on the coupon.

Eleventh. The court erred in repealing jugdment for the amount upon the evidence offered.

T. D. LINCOLN,
WM. S. HOLLMAN,
Of Counsel for Pl'ffs in Error.

Endorsed: The City of Aurora *v.* Charles M. West *et al.* Assignment of error. Supreme Court U. S., December term, '67. No. 91. Filed Feb'ry 24th, '68. T. D. Lincoln, Wm. S. Hollman.

2 In the Circuit Court of the United States, district of Indiana.

CHARLES W. WEST and JOSEPH TORRENCE
v.
THE CITY OF AURORA. } 531. Now in error in the Supreme Court U. S.

UNITED STATES OF AMERICA, *District of Indiana:*

I, John D. Howland, clerk of said court, certify that from the original record in my office it appears that rejoinder of the said city of Aurora, filed in said cause November 9th, 1865, to the replication of West and Torrence to the 2d, 3d, 4th, 5th, 6th, 7th and 8th pleas of said city, in the third paragraph counting from the end of said rejoinder, these words occur: "And it was by the said Supreme Court of Indiana found, held, and adjudicated that the said railroad was not a road to, or through, or from the said city of Aurora, when," &c.

Witness my hand and the seal of said court this 31 Jan'y, 1868.

[SEAL.] J. D. HOWLAND, *Clerk.*

Endorsed: No. 91. Supreme Court U. S. December term, '67. Addition to record. Feb'y 16th, '68.

Supreme Court of the United States,

DECEMBER TERM, 1867.

The City of Aurora

versus

Charles West and Joseph Torrence.

ARGUMENT FOR PLAINTIFFS IN ERROR.

T. D. LINCOLN,
WM. S. HOLMAN,
Of Counsel for Plaintiffs in Error.

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V.

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Parties dealing with municipal corporations bound to take notice whether their powers have arisen, pp. 63, 70, 79 to 86.

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There has been no ratification of these bonds, pp. 70, 75 to 79, 80.

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POINTS PRESENTED IN THIS BRIEF.

THE ESTOPPEL BY FORMER JUDGMENT.

First. The plea of *res judicata* is a plea of estoppel, requiring the highest degree of certainty known in pleading, and it can not be aided by intendment, inference, presumption, or argument. See pp. 27 to 30.

Second. The maxim, *nemo debet bis vexari pro una et eadem causa*, holds good only in those cases where the identical *point in dispute* in the case wherein it is pleaded, was put in issue, contested, and determined upon in the former suit. See pp. 17 to 22.

Third. It has been much doubted whether this maxim could be pleaded where the judgment relied upon was upon demurrer, and presented only a question of law; but, if it holds in any such case, it can only be where the demurrer reaches all there is in the case, and presents substantially the same question presented in the former suit, and where the second suit presents no new issue, and is an attempt to reargue or review the question settled in the former suit. See pp. 23 to 27.

Fourth. Where, in the second suit, the facts admitted by a demurrer, by pleading over, or orally in court (for the purpose of raising certain law questions), and the case is determined upon the questions of law thus raised, this can not be held to estop the party from putting these facts in issue in a second suit, or from pleading other facts which might have been pleaded in the first suit, but were not. See pp. 22 to 27.

Fifth. The disposition of a cause in this way very often avoids long and tedious trials of issue of facts, and the admission is only for the purpose of the suit, and to raise the legal questions therein. Such admissions are not even evidence in another suit, much less of the nature of estoppels. Indeed, they do not contain a single element of an estoppel, and are not so treated in law. See pp. 22 to 23.

Sixth. The two cases pleaded as *res judicata* went off upon demurrer, and the whole is upon the record; and a careful examination of the records and a comparison thereof with the record in this suit, will show that the questions put in issue, both of law and fact, were wholly different, and that the records pleaded can not, therefore, estop the defendant from proving the truth of her pleas. See Appendix, pp. 30 to 31, and 41 to 43.

Note.—The above points arise upon the 1st, 2nd, and 5th replications, and are discussed in the annexed pages, 1 to 50, with citations and quotations therefrom.

THE ESTOPPEL BY THE RECITAL IN THE BOND.

First. As these pleadings show that West and Torrence were not *bona fide* purchasers for value, that the city never received any consideration for the bonds, and never, in fact, delivered them, the recital in the bond that they were issued in pursuance of the 18th section of the city charter, can not prevent the city from showing that the bonds were not so issued. See pp. 55 to 65.

Second. The power of the city to subscribe for stock in the Ohio and Mississippi Railroad Company, and issue bonds in payment therefor, depended upon two conditions precedent, to wit: a road to the city of Aurora, and a vote of the people at an annual election, at which a majority of the qualified voters expressed their assent upon their tickets to such subscription, and required the council to make it; and the bonds could only be issued after such vote. See pp. 50 to 54, and 81.

Third. It was, therefore, incumbent upon the plaintiffs, as a part of their case, to show the performance of these conditions precedent before the issuing of the bonds. The pleadings show directly the contrary, and the facts thus shown are admitted upon the record by the demurrers. The city officers could not, therefore, by any recital in the bonds, estop the city, for they had no power to do or say anything in reference to such subscription and bonds. See pp. 54 to 78.

THE RESOLUTION OF THE CITY COUNCIL NOT AN ESTOPPEL.

First. The charter requires an affirmative vote of a majority of the qualified voters of the city before the council can subscribe for stock or issue the bonds, as contradistinguished from a vote of a majority of those voting, by which their officers are elected (sections 26 and 27), and by which they are authorized to sell the property of the city (sec. 10). A majority of those voting at an election is not equivalent to a majority of the qualified voters of the city, as the Supreme Court of Indiana have decided between these parties. The resolution of the city council, therefore, set up in the 10th replication, is not a good estoppel or defense to the plea to which it purports to be an answer. See pp. 66 to 100.

Second. The modern doctrine of equitable estoppel applies only where there is bad faith on the part of one party which has induced the action of the other, and where injury will result to the latter if the former be permit-

ted to establish the truth; and never is applied where the party was put on inquiry. It only applies where there is some degree of moral turpitude attached to the act of the party attempted to be estopped, and can not be applied to the voters of a city, who have given the city officers no authority to act, and who may, therefore, fairly presume that persons will examine as to their powers, and will not deal with them until they are fully clothed with power. See p. 56.

THE SUPREME COURT OF INDIANA HAS SETTLED THE QUESTION.

An estoppel against an estoppel opens up the whole matter, and sets it at large. The Supreme Court of Indiana, in the case pleaded in the defendant's rejoinder (22 Ind. 96) having substantially reversed their decsion, in the case pleaded (9 Ind. 86), and sustained the defenses in this suit, between these parties, the plaintiffs below can not insist upon that case as an estoppel. If the case pleaded in the rejoinder be not a technical estoppel, it is, nevertheless, an authoritative determination of the law arising upon the local laws of Indiana, and binding upon this Court. See pp. 85 to 91.

Note.—The above points arise under the 8th and 10th replications, and the rejoinder of the defendants, and are discussed in the annexed pages 50 to 92, of this brief, with authorities and quotations.

POWERS OF MUNICIPAL CORPORATIONS TO ISSUE SUCH BONDS.

FIRST. Municipal corporations as such, have no power to issue negotiable paper, except so far as it grows out of some specific authority, and becomes proper in the exercise of some power expressly given them. He who takes such paper, therefore, is bound to show that it was issued in accordance with such power, and grew out of something directly authorized. See pp. 52 to 54. 35- 45 43

SECOND. City officers are but special and limited agents, whose powers are distinctly defined by law, and whose acts are of public record. They do not act by virtue of the will of those who elect them, but by virtue of the law. The people can neither control their action, nor discharge them; nor can they be under the constant supervision of those for whom they act. There is, therefore, a broad distinction between them and the agents of private or business corporations; and those, therefore, who deal with the former, do so at their peril, as to the extent of their powers, and are bound to show that such officers have acted within the powers thus conferred upon them. See pp. 81 to 85. 37 45 38

THIRD. Where these officers can only act, except upon the happening of some event, until such event happens they have no power, and all persons are affected with notice of such fact, and their acts can not estop the body corporate. Where their power has arisen and they have authority to enter upon the business, and do enter upon it, but fail in some matter directory in reference to the execution of such power, there the corporation and the voters may, or may not, be bound by their acts, and affected by neglect to stop such officers in the sale of such bonds. The distinction is between a want of power to act at the time, and an irregular execution of the power after it has arisen in matters not being a limitation of the power itself. See pp. 57 to 63, and 85.

THE CITY COUNCIL COULD NOT RATIFY THE BOND.

FIRST. The city council of Aurora having issued these bonds before their power to do so arose, and having no power given them by law to ratify the same, or to act in relation thereto, except upon conditions that never happened, their subsequent acts and conduct can not be taken to be a ratification of the issue thereof. See pp. 75 to 78.

Note.—The four points last named arise on the 8th and 10th replications, and are discussed in this brief with authorities and quotations on pp. 50 to 90.

INTEREST CAN NOT BE ALLOWED UPON THE COUPONS.

As the coupons on their face purport to be interest warrants upon corresponding bonds, and they do not provide for interest, and, as by the law of Indiana, where they were made, and of New York, where they are payable, compound interest is illegal unless when promised *after* the interest became due, and as there was no proof of any such agreement, no interest could be allowed upon the coupons, and the Court erred in allowing it. See pp. 91 to 94.

Robert Clarke & Co., Printers, 65 West Fourth Street, Cincinnati.

Supreme Court of the United States,

DECEMBER TERM, 1867.

The City of Aurora

versus

Charles West and Joseph Torrence.

Error to the Circuit Court of the United States for the District of Indiana.

THE principal questions involved in this cause do not relate to the merits. The Court below decided that the plaintiff in error (defendant below) was estopped from going into proof upon the defenses set up in the pleas. The record, at first view, appears somewhat complicated, but a careful examination of it will relieve it from this apparent complication. There were seven special pleas filed by the defendant below. To these pleas there were eighteen replications, the three first of which are quite long. Of these eighteen replications, all were withdrawn or overruled except those presenting the questions of estoppel. The 3rd, 4th, 7th, 12th, 14th, 16th, 17th, and 18th replications were with-

drawn, and the Court below overruled the 6th, 9th, 11th, 13th, and 15th, so that these are out of the case, as it now stands before the Court.

In the printed record, the 7th replication is found on page 18, as though it was still a part of the case; but on page 200, it will appear that it was withdrawn by the plaintiffs below. It will be well for the judges, in examining these pleadings, to mark these several replications, as I have here stated the facts. The withdrawal of these replications will be found on page 200 of the printed record, and the overruling of the 6th, 9th, 11th, 13th, and 15th will be found on pp. 65 and 66.

As the Court below had determined the law of the case, the questions of estoppel put an end to it in favor of the plaintiffs below. Thereupon the defendant withdrew the general issue, and the plaintiffs withdrew all the replications which tendered an issue of fact, and left the case to rest upon the questions of estoppel, which were presented by the other replications.

There was then left in the case but the assessment of damages, which involved: 1st. The question whether these coupons drew interest; and 2nd. If they did, the calculation of the amount due upon the same. And this matter was submitted to the Court. *See record, p.* 200.

The questions for the consideration of the Court arise upon the 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th special pleas found on pp. 5 to 11 of the record: and the 1st, 2nd, 5th, 8th, and 10th replications, and the question of interest upon the coupons. The questions of estoppel were raised by demurrers to these replications, and the point now to be determined is, whether they do, in law, prevent the city of Aurora from insisting upon the special pleas as a bar to the action.

I have, for convenient reference, printed herewith in an Appendix, the declaration, the special pleas, and the replica-

tions that remain, together with such parts of the record as raised these questions.

Upon the replications, the Court below determined that the city of Aurora was estopped from entering upon the proof of any of the facts set out in said pleas, or either of them.

The questions of estoppel are presented by two records of prior trials had between these plaintiffs and the city of Aurora, upon other coupons of these same bonds, one of them had in the Dearborn Circuit Court of Indiana, and one of them in the Circuit Court of the United States for the District of Indiana. The pleadings in these two cases, so far as they are important to present these questions, are printed in the Appendix.

Upon an examination of these pleadings, it will be found that, in each of these cases, there was no issue of fact tried, much less any such issue of fact as was presented in this case. Both of them went off upon demurrer.

They were tried at a time when the questions relating to bonds of this character were just beginning to come before the Court, and when very little of authority upon the questions raised could be found. One of the points intended to be presented in this case is, whether the decision of a Court, upon a demurrer in a suit where one set of these coupons is sued upon, and a ruling for the plaintiff upon the demurrer, prevents a party for ever afterward from *putting in issue the facts*, which were admitted by the demurrer in the former suit, in a case between the same parties, arising upon another set of coupons; and further, whether it prevents the party from insisting upon any fact in the subsequent litigation, which might have been presented by plea in the former suit. The Court below ruled in the affirmative upon both these points, and in no other way could the judgment of the Court have been entered.

I claim that the Circuit Court erred upon both of these points.

Before entering into any discussion of these questions, it may be well to state what is the real controversy between these parties.

The 18th section of the charter of the City of Aurora provides as follows:

"The said city council, *whenever a majority of the qualified voters of said city require it*, shall have power, and they are hereby authorized, to take stock in any chartered company for making roads to said city, or for watering or lighting said city: *Provided, That no such stock shall be subscribed on the part of the city until a majority of the qualified voters thereof have signified their assent thereto, by expressing upon their ticket, at any annual election, that they are in favor of the subscription for such stock by the city council:* and to raise funds for the payment of such stock, the said city council shall have power and authority *to make and sell their bonds* under the seal of said corporation, payable in such time as they may deem proper and expedient, and bearing interest at the rate of six per cent. per annum, payable annually, and therein pledge to the holder of such bonds that the stock so taken, with all the dividends thereon accruing, shall be held and firmly bound for the payment of the said bonds and accruing interest on the same, and that the interest coupons attached to said bonds shall be received at all times, when due, for the payment of all taxes due to said city; the amount of stock subscribed in any one chartered company not to exceed fifty thousand dollars."

And by the 13th section of the charter of the Ohio and Mississippi Railroad Company, it was provided as follows:

"That the president and directors of said company shall be, and are hereby invested with all the rights and powers necessary and proper for the *survey, location, construction*, and repairing of a railroad *on the most direct and practicable route between Lawrenceburg, on the Ohio River, and Vincennes, on the Wabash River, having in view the interest of the company, and the convenience of the citizens of the State of Indiana*, and extend

westwardly on the like most direct and practicable route through the State of Illinois to the city of St. Louis in the State of Missouri, said route to be by them determined, not exceeding eighty feet in width, with as many sets of tracks as the president and directors may deem necessary and proper."

* * * * * * * *

"*Provided:* That said corporation shall not undertake the construction of said road beyond the limits of the State of Indiana, until the right of way shall have been granted in the State wherein it is proposed to construct the same."

In the year 1850, the council of the city having determined not that *a majority of the qualified voters of the city* had required the council of the city to subscribe $50,000 of the stock of the Ohio and Mississippi Railroad Company, as was required by the charter, but that *a majority of those voting at the election* had signified their assent to the subscription, authorized John D. Haynes, the then mayor, to subscribe to the said stock, etc. At this time there had been no location of the Ohio and Mississippi Railroad to Aurora, and there was nothing in the lay of the country, or in the settlements along the same, that necessarily determined that the railroad should pass through or to the city of Aurora; and it was also a question whether the 18th section of the city charter was intended to authorize the subscription of stock to a railroad of the description of the Ohio and Mississippi Railroad. It was then believed that the act never intended to authorize the subscription of stock to any such railroad company, over which the city could have no control, and which made the city of Aurora an insignificant way station; but only to the turnpike companies which connected the city with the surrounding country, and over which the city would have a controlling interest. In other words, that the charter was not intended to authorize the subscription of stock to a company to build a great railroad from Cincinnati to St.

Louis, costing millions of dollars (and in which the interests of the city must be insignificant), to be governed by directors in Cincinnati and New York, but to aid in building those roads in the immediate vicinity of Aurora, and which were of a local character: and therefore railroads were not spoken of, but a term designating the ordinary roads. The connection of this power with that of watering and lighting the city, would seem to indicate this. Nor was it supposed that the Ohio and Mississippi Railroad Company was "a chartered company for building roads to the city of Aurora."

There was also a serious question arising from the fact that a majority of the qualified voters of the city of Aurora had not voted to require the city council to subscribe the stock, but only a majority of those voting at the election; and it was not believed that the subscription was binding. Nor were the bonds then due. The city council therefore refused to issue the bonds in question, because of these and other reasons. Thereupon the railroad company got up an arrangement whereby three of their friends (one of them John Cobb, a director of the road, Townsend J. Taylor and H. L. Dean) were to take the stock of the city and secure the payment of the bonds in question; and to carry out this arrangement, the said bonds were issued, and put into the hands of Cobb to be taken to the city of Cincinnati where the principal office of the railroad company was. The then mayor went with him to obtain the certificates and have them delivered to Messrs. Cobb, Taylor, and Dean, the parties purchasing the same; *and upon the receipt of the said certificates for the purpose aforesaid, the bonds were to be delivered to the railroad company.* When Cobb, and Tumy, the mayor, arrived there, the officer of the Ohio and Mississippi Railroad Company, who was to issue the certificates of stock, was not then in the office, and the bonds were left

in the safe of the railroad company for safe keeping, until the certificates of stock could be issued and delivered to the city for the purpose of completing the said arrangement, upon which the city bonds in question were to be delivered to the Ohio and Mississippi Railroad Company. *At this time the stock was at the par value, and was so selling in the market.* The railroad company having obtained the actual possession of the bonds, put off the issuing of the certificates of stock upon one excuse and another, until it became very largely reduced in value (reduced to less than forty cents on the dollar), when they issued the certificates in a form and with an indorsement upon their face which utterly destroyed them. They made each certificate of stock for $1,000, subject to the payment of the whole $50,000 of bonds, which was inconsistent with the arrangement by which Cobb, Taylor, and Dean were to receive the same and indemnify the city against the bonds in question. By this course these parties were released from any obligation to take the stock and pay the bonds, and the city lost all benefit and advantage of the stock, for it was then of little value, and soon became absolutely worthless, and has ever since been so.

In the case of the *City of Aurora* v. *Cobb*, 21 Ind. 494, it was determined that these certificates of stock, under the railroad charter, were the proper evidence of the title, and that from the delay in their issue, and their issue as aforesaid, the parties named were released from this arrangement. And the Court will find on pages 197, 198 of the printed record in this case, it was decided by the Supreme Court of Indiana, that as the city of Aurora was not made a point on the Ohio and Mississippi Railroad in its charter, that there could be no valid subscription of stock to the same until after an actual location

of the road to the city of Aurora. *See printed record, p.* 198, *where the decision is found.*

That case was one between these parties instituted before this suit, and in which the validity of these bonds in the hands of the defendants in error, is now in litigation in the Dearborn Circuit Court. It is the same case, a part of which was before this Court at this term (No. 61), upon a question of removal to the Circuit Court of the United States.

It was also claimed in that suit, as it is claimed here, that the defendants in error were closely allied to the said railroad company, and largely responsible for its mismanagement, and that when they obtained the bonds in question from the Ohio and Mississippi Railroad Company, they had notice of their invalidity; and that the railroad company obtained them without any valuable consideration whatsoever, and when they had not in fact been delivered to said company, of which West and Torrence had notice when they received them.

The above statement of the history and origin of these bonds will enable the Court the better to understand the questions presented in the record: and inasmuch as the city has never obtained one farthing for the bonds, and has never in fact delivered them, or received the stock certificates, the usual evidence of ownership, and as the present holders are chargeable with notice of these facts, it is quite evident that the questions in this case have never been before this Court for adjudication. It is therefore hoped that the Court will give the case a careful and patient investigation.

I.

THE FIRST REPLICATION.

It is very clear that if the railroad company obtained possession of these bonds in the way above stated, and when there was no intention to deliver them, except upon a condition not performed, they obtained no title to the same.

First. To constitute a delivery of an instrument, it must not only pass into the possession of the party, but it must so pass with intent to deliver the same and give control over it as a completed instrument as the property of the party to whom the delivery was made. For cases somewhat similar to this, in this respect, see

Cook *v.* Brown, 34 N. H. 475.
Warren *v.* Sweet, 11 Foster, 340.
Jones *v.* Bush, 4 Harr. (Del.) 7, 8.
The Life Ins. and Trust Co. *v.* Cole, 4 Florida, 374.
C. W. & Z. R. R. Co. *v.* Iliff, 13 Ohio St. 251.
Aurora *v.* Cobb, et al., 21 Ind. 494.

In the case of *Warren* v. *Sweet*, 11 Foster, 340, the Court say:

"No form of words is necessary in the delivery of a deed. It is complete when the grantor has parted with his dominion over it, with intent that it shall pass to the grantee, provided the grantee assents to it, either by himself or his agent."

In *Cook* v. *Brown*, 34 N. H. 475, the Court say:

"But so long as a deed is within the control, and subject to the authority of the grantor, there is no delivery. And whe-

ther in the hands of a third person, or in the desk of the grantee, is immaterial, since in either case he can destroy it at his pleasure. To make the delivery good and effectual, the power of dominion over the deed must be parted with. Until then the instrument passes nothing; it is merely ambulatory, and gives no title. It is nothing more than a will defectively executed, and is void under the statute."

In *Jones* v. *Bush*, 4 Harr. (Del.) 7, 8, the Court say:

"The delivery of a deed is a question of intention, and all the formalities of signing, sealing, acknowledging, and even recording, are subject to this intention, when made clearly to appear. Now, although Isaac Jones executed this deed in the usual manner, acknowledged it, and had it recorded, it is clearly proved that he never intended to make it his deed, except under a certain contingency that never happened."

In the case of *Southern Life and Trust Co* v. *Cole*, 4 Florida, 374, the possession of the deed was obtained somewhat as the bonds were in this case. The Court say:

"It is said that delivery to an officer or servant of a corporation is delivery to the corporation. To this we assent, with the addition that such delivery is for the use and benefit of the corporation, and with intent to pass an absolute property or interest in the deed delivered; and the rule would be the same if the delivery should be made to a mere stranger. We do not think there is such a personal identity between the corporation and its officers that a deed may not be placed in the hands of the latter as an *escrow* until the performance of some condition, etc."

For a similar case, where the deed was placed in the hands of an agent of the company, see *C. W. & Z. R. R. Co.* v. *Iliff*, 13 Ohio State, 251.

This is equally true of a negotiable note, bill of exchange, or other instrument.

Denniston *v.* Bacon, 10 Johns. R. 198.

Slade *v.* Halstead, 7 Cow. 322, 323.

And it is clear that if the Ohio and Mississippi Railroad Company gave no value for these bonds, and they obtained no title thereto, that the defendants in error having notice of this fact, could obtain none.

A consideration is equally necessary in cases of bills of exchange and negotiable promissory notes, as for all other contracts, the difference being, that as to bills of exchange and negotiable notes, a consideration is presumed until the contrary is shown; and that, as between the original parties and all those having notice of the want of consideration, the defendant is permitted to defeat the ~~said~~ bill or note, by proof of a want of consideration. This is well settled; indeed, was never considered otherwise.

Story on Promissory Notes, sec. 190.
Story on Bills of Exchange, sec. 187.
Denniston *v.* Bacon, 10 Johns, 198.
The Harrisburg Bank *v.* Myer, 6 Searg. & R. 538.
Stears *v.* Lashley, 6 Term R. 62.
Goodman *v.* Simonds, 20 How. 363.

Second. The second special plea then contains a good defense (see Appendix, page 3), and requires a reply. Nor does the replication answer this plea. It is found in the Appendix, page 11. It does not put the plea in issue, or set up any avoiding matter, but it avers a former recovery by West and Torrence of a judgment against this defendant upon a set of coupons falling due before those sued upon in this suit, and that the defendant is estopped in this suit from setting up this defense—in other words, that this defense is *res judicata*—that the defendant can not be permitted to prove their pleas.

This is the question now before the Court. This question involves a careful examination of pleadings in the record thus pleaded.

Upon that examination the Court will find that the issue made in the second plea of the defendants in this suit, was not presented and made an issue in that suit.

THE FIRST REPLICATION DOES NOT RAISE THE SAME QUESTIONS AS THE SECOND PLEA.

I here specially point out some of the distinctions between the two.

First. It will be seen that that case went off wholly upon the demurrer of the defendants to the petition of the plaintiff, and upon the demurrer of the plaintiff to the first defense, and the demurrer of the defendants to the replication of the plaintiff to the second defense.

I shall hereafter show that a judgment upon demurrer does not estop a party from putting in issue in another suit upon another set of coupons the facts admitted by the said demurrer, and that the admissions of such facts by a demurrer is not *res judicata* of the same fact *put in issue* upon a subsequent trial.

But at present I desire to show that the question now put in issue by the second plea was not in issue in the cases pleaded.

The declaration in that case averred that the city of Aurora, by virtue of the authority vested in her by her city charter,

"subscribed for and took $50,000 of the capital stock of the Ohio and Mississippi Railroad Company, a company chartered to construct, and then constructing, a railroad to the said city (a majority of the qualified voters of the said city having first expressed their assent to such subscription by expressing on

their tickets, at an annual election in said city, that they were in favor of the subscription for such stock by the city council of said city); and to raise funds for the payment of said stock, the city of Aurora made, and sold, and delivered to the Ohio and Mississippi Railroad Company, fifty bonds of the said city

* * * * * * * *

and the same were afterward, to wit: on the day of , to wit: at the county aforesaid, sold and transferred and assigned to the plaintiffs, who ever since have been, and now are, the holders and owners of the same."

This is the petition so far as it contains any material allegation upon this point now being considered. It will be observed that it does not set out that the Ohio and Mississippi Railroad Company gave any value for the bonds when they were sold to them; or that when the railroad company sold them to the plaintiffs, West and Torrence, they gave value for them; nor does it appear that they purchased them before the coupons then sued upon were due; or that either the railroad company or West and Torrence were *bona fide* purchasers of the same for value, without notice, etc.

It is ~~not~~ alleged in the petition that the city of Aurora delivered the bonds to the railroad company for the stock, and that that company obtained the same for the stock, or how much the bonds were sold for, or indeed, that they brought anything. These allegations in reference to the sale of the bonds were carefully selected in order to bring the case, if possible, within the powers granted by the city charter.

The Court will observe that the part of the said petition relating to the vote of the people is put parenthetically, and is not well pleaded as a fact in the petition, which would be admitted by the demurrer in a replication involving the question of estoppel, where nothing is presumed or taken by way of argument or inference.

The petition is taken most strongly against the party pleading it, and the demurrer filed by the city of Aurora admits it only in that sense, and it does not, therefore, admit that either the Ohio and Mississippi Railroad Company, or West and Torrence, were *bona fide* purchasers for value, for it does not so state in terms, or show what the consideration was, or that they obtained the coupons sued upon before they were due.

To make a case of a *bona fide* purchaser for value, in any pleading,

"the consideration must be stated, with a distinct averment that it was *bona fide* and truly paid, independently of the recital of the deed. Notice must be denied previous to and down to the time of the payment of the money."

I quote from the decision of this Court, in *Boone* v. *Chilles*, 10 Pet. 211, where a very clear and distinct definition of the plea of a *bona fide* purchaser is set out.

See also the case of *Baynard* v. *Norris, et al.* 5 Gill, 481.

And see pp. 27–29 of this brief as to the certainty required in the allegations of this plea of estoppel.

But this petition does not even aver that ~~either of~~ these plaintiffs were *bona fide* purchasers for value; nor does it aver that they gave any value whatsoever for the bonds, or the coupons then sued upon—much less state what the consideration was. The demurrer did not therefore present the question that no valuable consideration was paid for these bonds. The question presented by the second plea was not then in any way put in issue by the demurrer to the petition.

Indeed, the Court below did not put its decision upon that point. They took broader ground, and held that because the defendants might have put it in issue in the former suit, they were estopped from setting it up in this suit. I shall hereafter show that this is not the law. But at present I desire to show

that the matters set up in the second plea were not put in issue, litigated, or adjudicated upon in the former suit.

It is apparent from this consideration, that the petition did not purport to set up that West and Torrence were *bona fide* purchasers of these bonds, or gave value for them, or that the Ohio and Mississippi Railroad Company were such, and gave value for the same. It was not necessary for them to aver it. It was only necessary for them to aver, as they did, that they were the holders and owners of them by assignment.

The law presumes that the holder of a negotiable note or bill, received it before due.

Pinkerton *v.* Bushey, 8 Wend. 602.
Canfield *v.* Gibson, 13 Martin, 145.
Hendricks *v.* Judah, 1 Johns. 320.

It also presumes that he gave value for it.

Conroy *v.* Warren, 3 Johns. Cas. 260.
Mandeville *v.* Welch, 5 Wheat. 282.

And even under the general issue pleaded, the plaintiff only has to produce his note or bill in Court, and these presumptions then follow.

Practically, therefore, such an issue is better presented by special plea setting up the want of consideration for the note between the original parties, and notice thereof to the plaintiff when he received the same—precisely what the second plea in this suit avers.

Now, how could it be claimed that the admission of certain facts in the former suit, from which the law presumes a consideration, was a *denial* of such consideration, and *an adjudication upon such denial*, I can not conceive. No two things could be so diametrically opposite. A party is not supposed to put in issue a presumption of law arising from an admitted fact.

If he wishes to do so, he must plead that which avoids the presumption, and take the burden of proving the avoided facts.

Carter *v.* James, 13 Mee. & W. 147.

It was for this reason, therefore, that the Court below held that we were estopped, not because we had put this matter in issue, but because we might have done so.

Second. The first defense demurred to in the Dearborn Circuit Court, set out the time of completing the road to the city of Aurora; and the reply to the second defense did the same, and although it appears that the road was located and built subsequently to the taking of stock and issuing bonds, it does not appear but that the Dearborn Circuit Court acted upon the idea that that was enough. The case went to the Supreme Court of Indiana, and there the Court, contrary to the fact, as this record shows, presumed that the railroad company had determined to locate the road to Aurora, before the subscription of stock and the issue of the bonds, and decided this point upon that idea. The case is reported in 9 Indiana, p. 86; and I take this from the decision of the Court:

"And as the date of the determination of the company to locate the road through that place is not given, we may presume it was prior to the subscription of stock, though we do not mean to decide that it must necessarily have been so."

When this point came before the Supreme Court of Indiana again, their attention was called to this sentence, and they expressly decide that an actual location of the road is a condition precedent to the taking of stock or the issue of these bonds. *See printed record, p.* 197.

It is very clear that no such issue is made by this first plea, to which this record is pleaded as an estoppel.

THE MAXIM, NEMO DEBET BIS VEXARI, ETC.

And here, perhaps, it may be as well to consider what is the meaning of the terms *res judicata*, or of the maxim, *Nemo debet bis vexari pro una et eadem causa.*

It is believed that the Court below did not confine the maxim within its true boundaries, and that they therefore erred upon these questions.

The party affected by it is estopped from further putting in issue the question to prevent unnecessary vexation to the opposite party. It is the bringing of the doctrine of estoppel into the case as a bar against the one or the other of the parties.

Estoppels are said to be odious because they shut out the truth. Perhaps this is not strictly and entirely true, as to that class of estoppels known as estoppels *in pais*, or equitable estoppels, which are resorted to in order to prevent an intended fraud upon a party who can in no other way defend himself, or as to the estoppel here pleaded. But even this class of estoppel is carefully guarded and confined within very narrow and well-defined limits.

There are certain rules now well established in relation to the maxim in question.

First. It requires that the *very point in question* should have been *in issue* and *determined* in the former suit.

Carter *v.* James, 13 Mee. & W. 145.
Washington, et al. *v.* Sickles, 24 How. 344.
Merriam *v.* Whittemore, 5 Gray, 317.
Tucker *v.* Houghton, 9 Cush. 350.

Putnam *v.* Moorewood, 3 East. 354.
Hutchins *v.* Campbell, 2 Wm. Black, 831.
Wales *v.* Lyon, 2 Gibbs. 281.
Gardner *v.* Buckle, 3 Cow. 126.
Bonchaud *v.* Dias, 3 Denio, 243.
Campbell *v.* Butts, 3 Coms. 174.
Doty *v.* Brown, 4 Coms. 73, 74.
Campbell *v.* Consalus, 25 N. Y. R. 616.
Guest *v.* Warren, 9 Ex. 379.
Hughes *v.* Alex, 5 Duer, 491.
Davis *v.* Talcott, 14 Barb. 620.
Perkins *v.* Moore, 16 Ala. 19.
Dooreston *v.* Payne, 2 H. Black. 531.
Bradshaw *v.* Heath, 13 Wend. 419.
Kilheffer *v.* Herr, 17 Searg. & R. 319.

An examination of the cases will show how exceedingly guarded the courts have been in speaking of this maxim, and in confining it to the *very point*, which was *drawn directly in issue and adjudicated in the former suit.*

Thus, in *Gilbert* v. *Thompson*, 9 Cush. 350, the Court say:

"The rule is well settled that nothing can be pleaded by way of estoppel, or relied on as conclusive evidence against a party, except it was *directly in issue and found by the former verdict.* The rule can not be extended to collateral facts, or facts to be deduced by inference from the former finding of the jury."

In *Doty* v. *Brown*, 4 Coms. 73, 74, the Court say:

"But the settled principle of law appears to be that *the same point or question*, when once *litigated and settled by a verdict and judgment thereon*, shall not again be contested in any subsequent controversy between the same parties defending *on that point or question.*"

In *Hyatt* v. *Bates*, 35 Barb, 316, JOHNSON, Justice, in giving the opinion of the Court, says:

"I do not see, therefore, why the question is not *res judicata*,

as to any new action involving an examination and determination of the *same identical questions.*"

In *Wales* v. *Lyon*, 2 Gibbs, 282, the Court say:

"The judgment of a court of competent jurisdiction upon a *particular matter, fact*, or *point, once litigated and determined*, is conclusive between the parties and ~~juries~~ privies."

In the case of *Gardner* v. *Buckle*, 3 Cow. 127, the Court say:

"The law is well settled, that the judgment of a court of concurrent jurisdiction *directly upon the point*, is as a plea in a bar, or evidence conclusive upon the parties upon the *same matter directly in question* in another court."

And in the late case of *Jenkins* v. *Robinson*, 2 British Reports on Appeal from Scotland, p. 123, it is decided that

"A decree obtained by arrangement between the contending parties, the court bestowing no judicial examination on the merits of the question, can never be *res judicata.*"

The LORD CHANCELLOR, in that case, says:

"In my opinion, *res judicata* signifies that the court has, after argument and consideration, come to a decision on a *contested matter.*"

In a case decided upon demurrer, is there anything contested or decided but the law affecting the facts pleaded? That is the only matter in issue, and passed upon.

In the case of *Goodall* v. *Tuttle*, 29 N. Y. R. 467, the Court say:

"If, for instance, the plaintiff had set up a title by prescription, or by grant, or by any valid contract, to have the defendant maintain a sewer over his lot, for the benefit of the plaintiff's lot, the judgment in his favor in that suit, supposing the court to have had competent jurisdiction, would have established his right for all future time, and the clearest evidence of the non-existence of the supposed title would not have avoided the estoppel; but a recovery upon no title alleged, but which was based wholly upon a misunderstanding

of the law, though it would be binding in the particular case, would not estop any right which could be availed of in a subsequent litigation."

This last sentence is hardly consistent with the rule that the decision of the Court upon a law point is an actual estoppel.

In this case two judgments were set up of suits before magistrates for damages for obstructing the water, in which the magistrate testified that the same matter was in controversy as in the suit where these judgments were set up as estoppels. Now, suppose this Court should be of opinion that the law was not correctly determined on said demurrer, would the Court and party be estopped in this suit?

The case of *Campbell* v. *Consalus*, 25 N. Y. R. 616, was an action to foreclose a certain mortgage, and the question in dispute was the amount due on it. The plaintiff insisted that the amount due had been conclusively adjudged in a former action brought to have the mortgage entered satisfied, the same having been paid. The former suit was referred to referees, who found that the mortgage was not satisfied, but that there was due $2,754.88, whereupon the former action was dismissed. There had been an agreement entered into by counsel that the referees might decide the case upon the principle of equity, without regard to technical rules, and without regard to the forms of pleading, and might amend the pleadings to meet the evidence, and that their report should be final and conclusive.

In deciding the case upon the estoppel, the Court say:

"To make such proceedings and judgment thus conclusive, it should have appeared, not only that the amount due on the mortgage was litigated, and found by the referees in such prior action, but it should also have appeared by the record of the judgment in such prior action, that the *amount due on the mortgage was put in issue by the pleadings* in such prior action. * * * * * * * * * * * *

Even an agreement between the parties, that matters foreign to the pleadings shall be given in evidence and decided by the

verdict of a jury, will not, it seems, enlarge the operation of a judgment entered on such verdict by way of estoppel."

This case well illustrates the care the courts have ever shown to confine this maxim to the *very point put in issue* in the former suit, *there litigated and decided.* It is only that *precise point* that is held to be *res judicata.*

It is entirely inconsistent with the rule that the party is estopped from putting in issue and litigating, not only all that might be *inferred* from the former verdict or judgment, but all that might have been thus put in issue or litigated.

In *Merriam* v. *Whittemore*, 5 Gray, 317, the Court say:

"But it is essential that the *issue* should be the *same.* The judgment is then coextensive with the issue on which it is founded, and is conclusive only upon matters *necessarily included* within it. *It comprehends any fact or title distinctly put in issue,* and is a bar only so far as the *same fact* or *title* is again in dispute."

In *Davis* v. *Talcott*, 14 Barb. 620, the Court say:

"In this case the record only shows that the same matters in controversy *might* have been litigated. If I have a correct appreciation of the case, neither the defendants' answer nor the record of the former action shows that the same matters *were* litigated. The most that they show is, that the same matters might have been litigated. If so, the burden lay upon the defendants to show the contrary. This they failed to do; it was, therefore, unnecessary for the plaintiffs to prove what they have proved, viz: that the matter in controversy was not litigated, but was withdrawn from the consideration of the referee, and did not pass into judgment."

In the case of *Washington, et al.* v. *Sickles*, the Court, in speaking of presenting this question under a system of general pleading so common in this country, say:

"That extrinsic evidence would be admitted to prove *that the particular question was material, and was in fact contested, and that it was referred to the decision of the jury.*" 24 How. 344.

In *Outram* v. *Moorewood*, LORD ELLENBOROUGH says:

"The estoppel precludes parties and privies from contending to the contrary *of that point*, or *matter of fact*, which, having been once *distinctly put in issue* by them, or by those to whom they are privy in estate or law, has been, on such *issue joined, solemnly found against them.*" 3 East. 355.

I might multiply quotations of the same carefully-selected language, when giving a definition of this maxim, to any extent, but it is unnecessary.

All the cases with a very few exceptions, were cases in which the point was one of fact submitted to the jury.

There are a very few cases in which the facts have been admitted in open court, or by a demurrer, and the case decided upon some law point thus raised, and where that point has been deemed adjudicated. I have not been able to find any case where, in the second suit, a party was estopped by such an admission, from putting *these facts in issue in another suit*, for the reason that in such a case it could not be said that *the point* had been *adjudicated*. There are very respectable authorities that hold that a decision upon a demurrer can not be *res judicata*, for the reason that, if the the Court were to hold that a decision upon a demurrer where the facts, instead of being contested, are admitted by a rule of pleading, the result would be that the Court could not, in another case, review that decision, even were it satisfied that the former decision was erroneous. If the determination works an estoppel, the party can plead it, and the Court would be as much estopped as the party.

And this would hardly be consistent with another rule of pleading, and that is that an admission made in a suit can be taken as estoppel only in that suit.

Carradine *v.* Carradine, 33 Miss. 733.
Carter *v.* James, 13 Mee. & W. 147, 148.
Gresly on Equity Evidence, p. 9.

Note.—Since this brief was written, I have seen the case of the *Commissioners of the Leith Harbor and Docks* v. *The Inspector of the Poor.* This was a case in the House of Lords, on appeal from Scotland, Session 1866, reported in Vol. 1, Part 1, McQueen's Scotch Appeals, 22.

In that case, the question was, whether the commissioners were liable for a poor rate for a given year, and the decision of the Lord Ordinary in relation to the rate for a previous year between the same parties, and in relation to the same property, was pleaded as *res judicata.* The House of Lords decided that the plea was not good.

LORD CHELMSFORD says:

"It appears to me that the argument for the appellants has not sufficiently attended to the nature of a plea of *res judicata.* The maxim of the civil law, *res judicata pro veritate accipiuntur, applied only when the identical question* which had been once judicially decided, was again raised between the same parties."

I also refer the Court to the case of the *Packet Co.* v. *Sickles,* 5 Wall. 592, in which the Court say:

"As we understand the rule in respect to the conclusiveness of the verdict and judgment in a former trial between the same parties, when the judgment is used as a technical estoppel, or is relied upon by way of evidence as conclusive, *per se,* it must appear by the record of the prior suit that the particular controversy sought was necessarily tried and determined."

By demurring to the complaint (so called) of West and Torrence, in the suit in the Dearborn Circuit, thus pleaded, or by not denying the facts, we are not to be held to have *put in issue* and *litigated* those facts, the want of consideration in these bonds, and notice to West and Torrence, set up in this second plea.

Third. I do not wish to misrepresent the Court below, but I understand them to decide that the party was not only estopped to dispute the facts admitted by the demurrer, but that

This is doubted Taylor's Ev. Sec. 745

These admissions are often made in ignorance of the facts, and still oftener in the confidence which counsel have in certain legal questions, and only to raise these questions, when the facts admitted might be contested; and much vexa[illegible] tion is thereby avoided.

Admission of facts directly made in a sworn bill [illegible], under proper restri[illegible] be used as evidence in another suit. But was it ev[illegible] that such facts, admitted only by a demurrer, or [illegible] denied by the following pleading, were to be taken as evidence, even against a party in another suit, as facts distinctly admitted or found?

"A demurrer admits all facts stated in the bill to be true; a plea admits all that it does not contradict; *but these admissions are merely for the purpose of trying the validity of the demurrer or plea.*" Gresly on Equity Evidence, p. 9.

If they pass into judgment, they are conclusive in that case, but no further; much less are the *inferences* and *presumptions* of law arising from these facts, to be used either as evidence or as an estoppel in another suit. See

Bradshaw *v.* Heath, 13 Wend. 419, 420.
Perkins *v.* Moore, 16 Ala. 19.
Carter *v.* Jones, 13 Mee. & W. 145.
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Admission of facts directly made in a sworn bill or answer, [redacted], under proper restrictions, may possibly be used as evidence in another suit. But was it ever heard of that such facts, admitted only by a demurrer, or because not denied by the following pleading, were to be taken as evidence, even against a party in another suit, as facts distinctly admitted or found?

"A demurrer admits all facts stated in the bill to be true; a plea admits all that it does not contradict; *but these admissions are merely for the purpose of trying the validity of the demurrer or plea.*" Gresly on Equity Evidence, p. 9.

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Third. I do not wish to misrepresent the Court below, but I understand them to decide that the party was not only estopped to dispute the facts admitted by the demurrer, but that

the party was also estopped from pleading the facts put in issue in this suit, if he had an opportunity to plead and put them issue in the former suit.

If, therefore, a man, from ignorance of the facts or of the law, or from any other reason, neglect to *put in issue* such facts, he is forever barred from putting them in issue between the same parties.

If this be law, counsel rarely appreciate the importance of the first suit in such a case, and are in a very embarrassing position in those States where the pleadings must be sworn to, or where the party pleading must swear that he believes the facts contained in his pleading are true.

Suppose he is ignorant of the facts contained in the pleading against him, what is he to do? Can he not demur without peril of ever after being estopped from putting in issue the facts admitted by the demurrer?

In Ohio, and in some of the other States, the parties must swear that they believe the facts stated in their pleading. A petition is filed against a party by an upright man. A conscientious person, not familiar with the fact, might hesitate to swear even that he did not believe the facts alleged against him, and thus sworn to. A holder of these bonds, or the maker of them, might find the responsibility of a demurrer somewhat weighty, if it were not only to fix his rights upon the coupons in suit, but all the undue coupons, and the bonds themselves.

Take this very case. When the suit in the Dearborn Circuit was commenced and prosecuted, the city of Aurora was not aware of the facts in relation to the delivery of these bonds, or of the notice to West and Torrence. The person who was mayor of the city when the bonds were obtained by the Ohio and Mississippi Railroad Company, soon after became

involved in serious difficulties in Aurora, and left there, and his whereabouts were not known in Aurora for several years. The facts came out in the case of *The City of Aurora* v. *Cobb* (21 Ind. 494), before referred to, when Mayor Tumy was found by said Cobb; and thereupon the City of Aurora set up the facts in the three additional defenses contained in case No. 61, heretofore considered by the Court at this term, obtained an injunction, after argument, restraining West and Torrence from transferring any of the bonds or coupons, or from bringing any other suits against the city, upon said bonds or coupons, and the city in that suit prayed that the bonds be declared void, and be delivered up to be canceled. The suit for that purpose (and of which No. 61 on the docket of this term is but a fragment) is now pending in the Dearborn Circuit Court, where the whole controversy between these parties, as to these bonds, will be settled.

If it had been understood, when the suit pleaded as an estoppel in this case was progressing, that the demurrers filed operated as estoppels as to all facts alleged in the pleading demurred to; and even further, as to all facts that might have been pleaded in that suit, it would have created embarrassment. But what could the city have done? They did not then know the fact upon which their pleadings in this suit are founded. And are they to be estopped from now pleading them?

Surely this is a new use of the doctrine of estoppel, entirely inconsistent with the generally-received idea of an estoppel; for parties are never estopped for not declaring that which they did not know. It would be a new and singular use of the doctrine of estoppel to bar a man from pleading, in a subsequent suit, that of which he had no knowledge when the former suit was in progress.

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But the maxim in question was never thus applied. It was intended to put an end to a mere litigious spirit, and was not intended to prevent a party from presenting in a second suit any fair question not before passed upon.

Let us look at the consequences of this doctrine of estoppel which holds that an admission by demurrer, or a plea in avoidance, forever after bars the party from putting the facts thus admitted in issue in another suit!

When the suits pleaded as estoppels were brought, very little was known of the law relating to municipal bonds of the character in question. They were just coming before the courts, and they raised new and most difficult points of law. Now, suppose at that time or at any time, a suit was brought before a magistrate upon one of the coupons to the railroad and municipal bonds. The counsel defending the suit demurs to the causes set up. The magistrate decides against him. Now, the magistrate having jurisdiction, his determinations are just as much estoppels as though they were made by the Supreme Court of the United States. Is the party ever after estopped from contesting, in another suit, the facts admitted by demurrer? Or, suppose the plaintiff replies to the plea, as in this case, and the defendants demur to the reply, and the magistrate should decide in his favor, and render judgment for him—*Is the whole set of bonds and coupons thereby made void?* That is the result, if that be the law. Now, I am inclined to think that if Mr Peabody should find himself in that predicament, and should bring suit to enforce some of his millions of bonds, *it would not be the law much longer.* There would be some way found to get rid of it. There would probably be a stop put to *such* estoppels, and the modern rage for pleading estoppels would receive a slight check.

It is true that there are one or two decisions of very respect-

able courts to the effect that a decision upon the precise point raised in that way by demurrer, may be pleaded as an estoppel.

It might with much plausibility be argued that these decisions extend the maxim in question to cases to which it does not properly belong.

The cases almost universally speak of issue of fact where a *particular point* was contested and determined by the jury. I am not, however, disposed here to dispute the propriety of these cases.

But the cases where a judgment upon demurrer have been held to be *res judicata*, were not like this. They were cases where *the demurrer presented the whole issue, and reached all there was in the case*, and where the attempt was to raise again the *same point* between the same parties. They were not cases where the facts admitted by the demurrer in the former suit, were denied in the second. They were cases presenting substantially the features of a rehearing, or a review, and where the attempt was to reargue or review the former determination of *the point previously determined.* And it is believed that no case can be found where the former determination was by demurrer, where it was held to be *res judicata*, except one where the question presented by the plea was somewhat like a rehearing or a review. Certainly, none where the defendant raised a distinct issue upon the facts admitted by the demurrer with other facts like that of notice to West and Torrence in issue upon these pleas.

Fourth.—I have heretofore stated that this *maxim*, being based upon the doctrine of estoppel, was confined within very narrow and well-defined limits, even where it was most favored, to wit: in equitable estoppels; and that it could not be aided by intendment, inference, or argument. I find this very idea

well expressed in several cases in reference to this very maxim.

Thus, in the case of *Perkins* v. *Moore*, 16 Ala. 19, JUDGE CHILTON, in giving the opinion of the Court, says:

"In my judgment, the plea, being in the nature of an estoppel, can not be aided by any intendment."

And in the case of *Carter* v. *James*, 13 Mee. & W. 147, heretofore cited, and which is very much in point, the Court say:

"In order to make out that this is a good estoppel, the plea ought to show that *the point* intended to be relied on as a defense was, in the former proceeding, decided against the plaintiff. Now, this is an action on a mortgage deed for £600 with interest, while the action set out on the record in the plea was upon a bond for £1,200, given to secure a sum of £600 with interest; and it appears that in the course of the litigation of that case, the present defendant pleaded, among other things, that there was a corrupt and usurious contract between the plaintiff and himself, for a loan of 124*l.* 15*s.* 6*d.*; that, to induce the plaintiff to forbear in respect to the payment of that sum, the defendant agreed to pay him more than the lawful interest, namely, a sum of 10*l.* 10*s.* 1½*d.* which thereby became due in respect of the sum of 124*l.* 15*s.* 6*d.* The usurious and corrupt agreement is set out on the face of the then plea, which also went on to state that it was agreed that a bond should be given to secure this usurious interest, and that in pursuance of that agreement, *the parties executed the bond for the amount of the debt in question, and the interest therein stated. This latter allegation alone was traversed* by the plaintiff in his replication; so *that the only issue the jury had to try* was, whether the bond was given for that interest, among other debts, amounting altogether to the sum of £600. The jury found that fact; and it was, *incidentally*, in that case, taken for granted, that if the bond was given as a security for that debt and that amount of interest, the interest so secured was usurious, according to the previous averments in the plea, *which were not in issue* by the plaintiff, *but admitted by him for the purposes of that suit, and as I apprehend, for the purposes of that suit only.* If, therefore, the plaintiff were to be estopped now, when the point now in issue was not raised at all in the former

suit, he would be deemed estopped by the finding of a matter which *he never disputed, and on which the jury gave no verdict*, and the court no judgment. I take it that the party is only estopped by the form of the record in that action from recovering on the bond, or disputing that any of the issues then determined by the jury were wrongfully decided; but that he is not estopped by any of the other facts which were taken in that case to be true, merely for the purpose of deciding the question at issue. It is only for that purpose that the plaintiff must be considered as having admitted these facts in pleading."

This case is in direct issue with the rule adopted by the court below, to the effect, that the facts admitted by the demurrer in the Dearborn suit could not be disputed in this; and of that other rule, that, because we might have disputed them in that suit, we are estopped from pleading them in this. So, indeed, are most of the cases above cited.

And in the case of *Bradshaw* v. *Heath*, 13 Wend. 419, 420, the Court say:

"1. That the judgment of a court of concurrent jurisdiction *directly upon the point*, is, as a plea, a bar, or as evidence conclusive, between the same parties, upon the *same matter directly in question* in another court; 2. That the judgment of a court of exclusive jurisdiction, *directly upon the point*, is, in like manner, conclusive upon the *same matter* between the same parties, coming incidentally in question in another court. But neither the judgment of a concurrent or exclusive jurisdiction *is evidence* of any matter which came collaterally in question, though within their jurisdiction; nor of any matter incidentally cognizable; nor of any matter to be *inferred by argument*, by the judgment."

And in the case of *Dovaston* v. *Payne*, 2 H. Black. 531, Mr. Justice Buller says:

"But it should be remembered, that the certain intent in every particular applies only to the case of estoppels."

Mr. Chitty speaks of the plea of estoppel as one not favored by the courts: and Mr. Stephens, in speaking of a rule that a

pleader need not state matter which would more properly come from the other side, says:

"There is an exception to the rule in question, in the case of certain pleas which are regarded unfavorably by the courts, as having the effect of excluding the truth. Such, as it appears, are all pleas in *estoppel*, and the plea of *alien enemy*. It is said that these must be *certain in every particular;* which seems to amount to this, that they must meet and remove, by anticipation, every possible answer of the adversary."

See, also, 1 Chitty on Pleading, p. 224.

Fifth. I have above referred to the petition in the case tried in the Dearborn Circuit, and shown that the demurrer to the same could not be held to *put in issue* the want of consideration of the bonds, as between the city of Aurora, the Ohio and Mississippi Railroad Company, much less the notice of this fact to West and Torrence, when they received the bonds; and that, therefore, under the above rules the maxim does not apply.

In the case of *Washington, et al.* v. *Sickles*, before referred to, this Court held that where there was a special count upon a contract, and the common counts, and a general verdict, that the judgment rendered thereon at the same term as a finding upon the special count, could not be set up as an estoppel to a second suit, where the declaration was substantially the same as the special count in the first suit.

Now, that is precisely this case. There were common counts in this complaint, and none in the former suit, and the judgment was general. It is true that the judgment could not, as the evidence shows (and it is all in the record), be upon the common counts—but it does not appear that the Court so held or ruled.

Besides there was no averment of any consideration for

these bonds, or the want of it, in the former suit; nor any averments as to notice thereof to West and Torrence. And the case of *Washington, Georgetown, and Alexandria Steam Packet Company* v. *Sickles*, is a direct authority against the estoppel in this case.

I have so far only referred to the petition in the suit, and the effect of the demurrer, for the reason that unless the admission of the facts contained in the complaint by the demurrer, or by a reply (in not denying them), presented the *same point* for adjudication, raised the *same issue*, then it is quite clear that it was nowhere raised in the case referred to. An examination of the first and second replications, the demurrer to the first, and the reply to the second, and the demurrer thereto, nowhere raises this question of the *original want of consideration*—not a failure of consideration, but the want of it, in the original passing of the bonds from the city to the Ohio and Mississippi Railroad Company, and the notice of such failure to West and Torrence, when they received the same.

It is unnecessary to dissect these subsequent pleadings. There is nothing whatsoever in them going to this consideration, or intended to raise any such question. The manner in which the city of Aurora obtained the bonds, and the notice of it to West and Torrence, was not then known to the city of Aurora, and this second plea was not pleaded, and could not have been intended to be pleaded. These replications in the record of the suit in the Dearborn Circuit Court, and the reply to the second of these replications in that suit, will be found in the Appendix, pp. 11 to 22, where they can be conveniently examined. A careful examination of them will clearly show that the points or matters raised by the second plea in this case, were nowhere "put in issue," "contested," or "decided" in that suit, and that the demurrer to the replication should have been sustained.

II.

THE SECOND REPLICATION.

This replication purports to answer the second, third, fourth, fifth, sixth, seventh, and eighth pleas, and was held to be a good reply to the whole of said pleas.

Now, unless that replication was a good answer to each and all of the said pleas, if it was not good as to any one of them, the Court erred in overruling the demurrer to the same.

A plea or replication, to be good, must answer all it purports to answer.

1 Chitty on Pleading, 523.
Brewster *v.* Hobart, 15 Pick. 306.
Spencer *v.* Southwick, 11 Johns. 587.
Lattin *v.* Vail, 17 Wend. 189.

This replication set up a suit, brought by West and Torrence, in the Circuit Court of the United States, against the city of Aurora, upon another set of coupons, in which judgment was had against the city, and this judgment is pleaded as an estoppel to all of the special pleas.

It was a judgment upon demurrer to the declaration, in which there was no point litigated or put in issue as to the facts. It was a mere question of law presented upon the declaration; nothing else was presented, put in issue, or contested. If that same declaration was before the Court in this suit, and no more—and if, instead of raising issues of fact for

the jury, the city of Aurora had demurred and endeavored to reargue the same question, however inconsistent it may be with the rule of law, that the Court is not bound in a second suit by an erroneous view of the law taken in a former suit, yet I admit that under several very respectable authorities, the replication would be held good as an estoppel.

But that is not this case, and the issues presented in the two records are as different in character as they could

For the whole declaration in this case, taker printed record, pp. 55 and 56, see Appendix, pp.

Now, what is declared in this declaration? Noth ing whatsoever. There are three very long recitals ing with a "whereas," which require the reader tc take breath after each one, before he plunges into the other. And then what follows? Any promise? None at all; but the pleader having apparently exhausted himself with the history of the matter in these long recitals, he closes thus:

"Yet the defendant hath disregarded the promise so made, etc."

The pleader seems to have followed some of the looser forms of the common counts, and, proceeding upon the idea that he could declare against this municipal body, having but a few special and limited powers granted by statute, as he might against an individual, having general and unlimited powers, he has set up no special power or authority given the city, nor the performance of any of the conditions precedent required by the city charter, to be performed *before the city had any power whatsoever to subscribe stock or issue the bonds in question.* A careful examination of this declaration will show that not a solitary line of it is well pleaded, for it is all in general recitals under a "whereas," in reference to a matter requiring positive and definite averments.

There was, therefore, by the stricter rules of pleading, nothing admitted by the demurrer.

See Syme v. *Griffin*, 4 *Hen. & Mun.* 280.

But pass this over, and suppose it all to have been directly and properly pleaded. What does the demurrer put in issue? It refers the question to the Court, whether by law the plaintiffs could recover upon *that* declaration. That is all; and that being a question of law, it was supposed to live in the breast of the judge, and could not be changed by argument or proof. Nothing that the defendant could do would change the result. Whereas, had he put the facts in issue, and referred the matter to the jury, he would have presented a different issue, and his neglect to present his proof might be decisive against him. In the one case, the question is one of law, purely for the decision of the judge, the facts being admitted; and in the other, on the contrary, questions of fact before another tribunal, where the same facts were denied, and where defendant might largely influence the result by his neglect to present his proof. In no sense are they the same issues or questions. Now, this record is pleaded by way of estoppel; and, as has been shown, it can not be aided by inference, presumption, or argument.

See cases cited on pp. 28 *and* 29 *of this brief.*

Though this declaration recites that the city of Aurora, "for a valuable consideration," did "execute and issue" these bonds, it does not recite what that consideration was, or that the bonds were issued to the Ohio and Mississippi Railroad Company, or that that company paid anything for them, much less what the company paid.

It is not, therefore, a good plea of *bona fide* purchaser, or inconsistent with the second plea, which avers that when the

Ohio and Mississippi Railroad Company obtained the bonds, they paid no value for them. And though this declaration does recite that West and Torrence, for a valuable consideration, had become the legal holders and owners of the said bonds, it does not aver what the consideration was, or when it was paid, or that they obtained the bonds without notice. And in this, it is not inconsistent with the second plea, which avers that the railroad company paid no value for them, and that West and Torrence had notice of this fact when they became the holders of the same. And yet the issues and questions presented in the cases are as different as they could well be. It is not, therefore, as has been shown, a good plea of *bona fide* purchaser for value.

Though this declaration is badly pleaded, and imperfect, it seems to be based udon the idea that a municipal corporation, like the city of Aurora, was endowed with general powers to issue negotiable paper, and that it was therefore proper to plead against her, precisely as it would be if she were an individual endowed with general powers.

There certainly is no foundation in law for any such theory, and no authorities can be found to favor it. I say this deliberately, notwithstanding some loose expressions to be found in some late cases.

Halstead *v.* The Mayor of New York, 5 Barb. 224.
Halstead *v.* Mayor of New York, 3 Coms. 433.
Starin *v.* The Town of Genoa, 23 N. Y. R. 449.
Gould *v.* The Town of Sterling, 23 N. Y. R. 464.
Beckel *v.* Union Township, 15 Ohio St. R. 443, 445.
Hopple *v.* Brown Township, 13 Ohio St. R. 324.
Town of Rochester *v.* The Alfred Bank, 13 Wis. 439.
Clark *v.* The City of Janesville, 13 Wis. 418.
McSpeddon *v.* The Mayor of New York, 7 Bosw. 609.
Wallace *v.* Mayor of San Jose, 29 Cal. 188.
Douglass *v.* Mayor of Placerville, 18 Cal. R. 648.

Clark v the City of Des Moines 19 Iowa 214
Veder v the Town of Lima 19 Wis 214
Cook v Hancock Co - 38 Ill 49-50

First. Municipal corporations, *prima facie*, are endowed by statute with a very few limited, special powers, relating solely to the good government and welfare of the city, and they have no power to issue negotiable securities of the kind unless they grow out of some matter or thing which such corporations are authorized to do. Nothing could be more dangerous than the doctrine, that, *prima facie*, cities and municipal corporations have any general power to issue such paper. If so, parties would only be bound to inquire, not whether the city had power to issue such paper, and for what it was issued, but whether the paper was signed by the proper city officers? And a party upon such proof would recover. It is quite evident that municipal corporations would be at the mercy of their officers if any such rule could prevail.

See cases above cited, and *Mayor of the City of Baltimore* v. *Eschback*, 18 Md. 282, 283.

And yet I believe that the impression, to a very considerable extent, has gone abroad that such is the law, in the judgment of this Court. I once heard a judge in one of the Circuit Courts of the United States suggest to a plaintiff, in a trial upon such city bonds, that he need only to present his coupons, and prove that they were signed by the city officers, and he had made out a *prima facie* case!

It was stated, that because the paper was negotiable, innocent holders need not prove the authority of the officers of the city to execute it!—the very reason, indeed, why the authority of the agent should be proved. One thing is certain, that an innocent holder, who has a note signed by an agent, must prove the authority of the agent before he can recover; and this though individuals may have and do have general agents, and general power to issue such paper.

Whereas, municipal corporations have but a few special and

limited powers, and can and do therefore have but a few special and limited agents.

Halstead *v.* The City of New York, 5 Barb. 224, 225.

And as they have no general powers to issue negotiable paper, every person has notice of this, and a definite source of inquiry as to their powers, to wit: their charters and enabling acts, and is bound, at his peril, to see that the city officers have power to issue such paper. I mean, of course, where it is denied. They have notice of this on the face of the paper.

Pearce *v.* Madison & Indianapolis R. R. Co., 21 How. 443.
Starin *v.* The Town of Genoa, 23 N. Y. R. 449.
Gould *v.* The Town of Sterling, 23 N. Y. R. 464.
James *v.* The Cincinnati, Hamilton & Dayton R. R. Co.
Smead *v.* The Indianapolis R. R. Co., 11 Ind. 109.

And I am quite certain, that in cases where the doctrine of estoppel is not brought to bear upon the question, there is no published decision of this Court that countenances any other view of the law.

Why should this presumption prevail that the agent has authority as against municipal corporations, when it does not as against an individual? The reason for the presumption as against individuals is much stronger. And yet it is clear that there is no such presumption there.

Halstead *v.* The City of New York, 5 Barb. 224.

The officers of municipal corporations are public officers chosen to act for the people, and act by resolutions entered upon public records open to all. They are known to be but limited and special agents, not accountable to the same extent as private agents, and not, in fact, under the constant supervision of the principal. They derive their powers from the law, and not from the principal whom they represent; whereas, private agents

obtain all their powers from their principals, who may give them general and unlimited powers upon any subject. They do not act by public resolution, and are presumed to be under the constant supervision of their principals—a presumption that can not prevail as to the acts of city officers. The latter may act, within the powers granted, without regard to, indeed contrary to, the wishes of the people who elected them, and they can not be displaced at the will of the people; whereas, private agents may be dismissed at pleasure.

Second. And where the suit is against an artificial body, that has no natural powers, and ordinarily but a few special and limited powers, and no general agents, it is necessary, in pleading, to set up the facts that bring the power of the officers within some enabling statute.

And where, as in this case, all the power of the city of Aurora is to arise upon and is subject to conditions precedent, the pleader must set out the performance of the conditions, and aver the necessary fact, to create or give rise to the power.

1 Chitty on Pleading, 320.
Halstead *v.* City of New York, 5 Barb. 224, 225.
Starin *v.* Town of Genoa, 23 N. Y. R. 450.

The Supreme Court of Indiana has held, in a case between these parties arising upon these very bonds, that the city of Aurora had no power to take stock in such a railroad except upon two conditions precedent:

1. A vote of the people requiring it; and
2. The location of the road to the city.

See printed record, p. 197.

The pleader, therefore, must specially plead these facts in order to raise the power. He can not by any such general reference under a "whereas," as that in this declaration, raise the power; and the demurrer, therefore, does not admit any such power.

This question as to the powers of municipal corporations to issue negotiable securities, has been well presented in a case in New York, which arose upon some drafts given by the city officers for fees of counsel in defending the city, and which were held by an innocent party who had given value for them: and it was held that the plaintiff could not recover.

Halstead *v.* City of New York, 5 Barb. 224, 225.

In this case, the Court say:

"It was contended on the argument, that the rule of the law merchant, which protects the *bona fide* holder of negotiable paper, without notice, was of universal application; and that, if the defendants had a right to issue negotiable paper, such paper must, *ex necessitate*, be subject to the same rules as the negotiable paper of an individual. This view seems plausible, but will it bear the test of examination? In the first place, *the defendants have no general power, either express or implied, to issue negotiable paper. They have only a special and conditional power for that purpose; that is, it is necessary as a condition precedent to the validity of such paper that the debt which forms its consideration should be contracted in the course of the proper legitimate business of the defendants.* The act under which they were incorporated is declared to be a public act. Every person who takes their negotiable paper *is bound to know the extent of their powers, and is presumed to receive it with a full knowledge that they have only a limited and conditional power to issue it. He is thus put on his inquiry, and takes it at his peril.* The circumstances under which a *bona fide* holder, without notice, receives the negotiable paper of a natural person, or of a corporation having the general express power to issue negotiable paper, are very different. In both these instances the power to issue such paper is general and unconditional; and hence, the rules which have been established by commercial policy, for the purpose of giving currency to mercantile paper, are applicable."

This case was taken to the Court of Appeals, and is reported in 3 Coms. 433.

In the opinion that Court quotes approvingly the following from Willcock on Municipal Corporations:

"A municipal corporation," says Willcock, "has at common law, few powers beyond those of electing, governing, and re-

* See Clark v the City of Des Moines - 19 Iowa 214
See Quotation Mk 85-6 of this brief

moving its members, and regulating its franchises and property. The power of its governing officers can only extend to the administration of the by-laws and other ordinances by which the body is regulated."

See, also:

Beckel *v.* Union Township, 15 Ohio St. R. 445.
Starin *v.* Town of Genoa, 23 N. Y. R. 452.
Woods *v.* County of Lawrence, 1 Black. R. 409.

And I do not understand that this Court has held any other or different doctrine. It has held that where the city officers had issued these bonds and certified upon their face that they were issued in accordance with certain laws authorizing such issue, and the citizens have permitted them to be negotiable and to pass into the hands of innocent parties, *and have received the benefit of them*, that they shall be estopped from denying the regularity of the issue of the bonds. And I do not understand that the Court has assumed that broadly, without regard to the power of the city to issue the bonds at the time they were issued. Nor do I understand that the Court has anywhere announced that such corporations have, *prima facie*, any power to take stock in railroads or issue any such bonds. Moneyed corporations and business corporations generally, *prima facie*, have power to issue negotiable paper. This power grows out of the general purposes of such corporations, the known usages of the country, and the general habits of business.

Partridge *v.* Badger, 25 Barb. 170.
Bridgeport City Bank *v.* Empire D. Co. 30 Barb. 423.
Bank of Tennessee *v.* Patchin Bank, 3 Kern. 315.
Hamilton *v.* Newcastle & D. R. R. Co. 9 Ind. 361.

But this power is denied as to insurance companies, for the reason that it would not seem to fall within the general purposes of such companies, or to the general usages of such companies to use such paper.

Bacon *v.* The Mississippi Ins. Co. 31 Miss. 117.
N. Y. F. Ins. Co. *v.* Ely, 5 Comst. 572.
N. Y. F. Ins. Co. *v.* Ely, 2 Cow. 701.

A municipal corporation, if it issue such paper, does it by virtue of some special authority, and not by any general usage or necessity of its business or powers.

Third. In this case, the city never received the stock, nor any benefit from it. They never received anything for the bonds, and they are in the hands of parties who had knowledge of these facts when they received them. Such is the pleading admitted by this replication.

I say, then, that the record pleaded presents no *res judicata* of the questions involved in these pleas, and the demurrer to it should have been sustained.

Look, for instance, to the second plea: how does this record answer that? It is the plea of want of consideration, and notice to West and Torrence.

And how does it answer the third plea? That also sets forth the limited powers of these two companies, and is to the effect that when the stock was subscribed for the Ohio and Mississippi Railroad Company, it was not a chartered company to build a road to Aurora, and had not located a road to Aurora; that the city had no authority to subscribe for the stock, and that West and Torrence knew these facts when they took the bonds.

The Supreme Court of Indiana has decided in the case, so often alluded to between these parties, in reference to these bonds, that the city had no authority to subscribe for stock until the road was located to the city.

See printed record, pp. 197, 198.

Look at the fourth plea, which negatives any authority of the city to take the stock and issue the bonds, by averring the

limited power of these corporations, and that there was no such vote as the charter required, and which the Supreme Court of Indiana held was a condition precedent. What is there in this record that answers that?

The fifth plea shows the limited power of these two corporations; that there was no determination of the Ohio and Mississippi Railroad Company to locate the road to Aurora, and no location thereof to that city, till long after the issuing of these bonds, and that West and Torrence, when they obtained them, had notice of the facts contained therein. This is a good plea, as the Supreme Court of Indiana has determined in *City of Aurora* v. *West, et al.*, 22 Ind. 95.

A careful examination of the pleadings in the case pleaded, will show that the Court never before decided that point. It was not distinctly raised in the case pleaded, and which is reported in 9 Ind. 86.

The seventh plea sets up the limited powers of these corporations, and a total failure of consideration, before West and Torrence got the bonds; and it connects West directly with this failure of consideration, and charges the plaintiffs with notice when they took the bonds.

The eighth plea sets up the limited power of these corporations, and avers that the city had no power to issue such bonds, except after a valid subscription of stock under the 18th section of the city charter, and that by such section her power was to make and sell the bonds to pay for the stock; that she never made and sold the same, nor were the bonds sold by any authority from her; that the said bonds "came into the hands and possession of the Ohio and Mississippi Railroad Company long prior to the issue of any such stock by the said railroad company for the same without such sale, and without any authority whatsoever from the defendants."

It also charges West with notice of this fact. Here is an allegation that the bonds were never sold, as required by the city charter, and that they were never delivered to the railroad company.

Clearly this is a good defense.

See *Gould* v. *Town of Sterling*, 23 N. Y. R. 460.

And how does the record of the suit in the United States Court answer this? In no way. No such question was raised in that case, or in any way directly or indirectly made. No issues of fact were tendered, and very different questions of law were raised.

The same is true of the other pleas. I shall not go over them in detail, for it is enough to show that the Court below erred in sustaining this replication, if it did not answer either of these pleas.

It does not in fact answer any one of them (to use the language of LORD CRANWORTH), and no such points, questions, or issues were made, "contested and adjudicated."

III.

THE FIFTH REPLICATION.

This replication sets up the same record referred to in the first replication, as a bar to the third, fourth, fifth, sixth, seventh, and eighth pleas.

I shall not consider this record again in detail, with refer-

ence to these pleas. I did that sufficiently when the first replication was under review. As was then stated, if this fifth replication does not answer each and all of these pleas, if it is not a good answer to any one of them, it is bad, and the demurrer thereto should have been sustained.

It is believed not to answer either of them.

How, for instance, does it answer the fourth plea, negativing the vote of the people, which was a condition precedent to any power which the city might exercise?

The Court will bear in mind that in these pleadings the bond has not appeared in the case, and therefore as yet and in connection with these replications, they can not be aided by any recitals therein contained; and I shall soon show that these recitals are of no avail in this suit as an estoppel.

How does it answer the eighth plea, which avers that the bonds were never sold by the city, or by her authority; that the Ohio and Mississippi Railroad Company got possession of them without any authority from her—in other words, that they were not delivered to that company, and that West knew the facts when the plaintiffs obtained them? Clearly nothing of this was put in issue and contested in that suit. It can not be gathered either from argument or inference even. Instead of requiring of this plea, "certainty to every intent in particular," give it the broadest and loosest possible construction, and it can scarcely be imagined that any such questions were presented or involved in that suit.

Under any rule which any court has heretofore adopted in reference to this maxim, it can not be held that the points presented by these pleas were "put in issue," "contested and adjudicated," in the record in the Dearborn Circuit, and it can not therefore be treated as an estoppel. Indeed, the whole record and issue were entirely different.

IV.

THE SIXTH REPLICATION.

This replication sets up the record in the Dearborn Circuit as an answer to the third plea. This plea avers that the Ohio and Mississippi Railroad Company had power to locate and construct a road on the most direct and practicable route between Lawrenceburg, on the Ohio River, and Vincennes, on the Wabash, and extend the same eastwardly to Cincinnati, in the State of Ohio, and westwardly through the State of Illinois to St. Louis in Missouri; that the city of Aurora was a municipal corporation, and that by its charter the council were authorized and empowered, whenever a majority of the qualified voters of the city required it, to take stock in a chartered company for making roads to the said city, and to make and sell their bonds to raise funds for the payment of the said stock; that the said city was not empowered to take stock in any company not chartered for making roads to the said city, nor to issue her bonds to raise money to pay for any such stock; that the Ohio and Mississippi Railroad Company was not a company chartered for such purpose, and was not, at the time said subscription was made, or at the time the said bonds were issued, located to said city, or engaged in building any road to the city, *nor had it determined to build any road to the said city*—and that the plaintiffs, when they became the holders and bearers of said bonds and coupons, had notice of the said facts.

This plea raises the question, whether the city council had any authority to subscribe to this stock and to issue the bonds to pay for it under the circumstances?

The language of the charter is as follows:

"The city council, *whenever a majority of the qualified voters require it*, shall have power, and they are hereby authorized to take stock in any chartered company, for making roads to said city, or for watering or lighting the city; provided, that no stock shall be subscribed on the part of the city until a majority of the qualified voters thereof have signified, etc., etc."

The Court will observe that the point presumed by the Supreme Court of Indiana in the case pleaded, is here expressly negatived, to wit: the time of the determination of the Ohio and Mississippi Railroad Company to locate its road to Aurora.

See quotation taken from that case on p. 16 *of this brief.*

The language "to take stock in any company chartered for making roads to the said city," was understood at the time to refer to the local turnpike running to the city, and bringing business there for shipment up and down the Ohio River, and over which the city might have some control, and not to a railroad running from Cincinnati to St. Louis, governed and controlled in St. Louis, Cincinnati, and Wall street, New York—a road not chartered for any purpose connected with the city whatsoever; that made the city no point on the route, and which, if it touch there at all, made it but an insignificant way place: a road, in fact, ruinous to the then growing commerce of Aurora, which was gathered there from the surrounding country for sale and shipment by river above and below.

It is clear that the Ohio and Mississippi Railroad Company was not chartered for any such purpose. The reply to this plea admits the fact, and the thirteenth section of the charter printed on page 4 shows it.

And in the suit before referred to between these parties, in reference to these bonds, the Supreme Court of Indiana has decided that the existence of the road running to the city, was a condition precedent to the right of the city to take such stock or issue bonds.

See printed record, p. 197.

That power was never before passed upon by the Supreme Court of Indiana, as a careful examination of the case reported in 9 Ind. 86, will show, as has been before stated.

The Supreme Court of Indiana, in the case in 22 Ind. 96, determined also that as Aurora was not made a point on the road, "it could only be such by the subsequent action of the directors of the corporation; and until such action had been had, no subscription of stock in the corporation could be made."

See printed record, p. 198.

They also decided in the same case, that by the peculiar terms of the charter of the Ohio and Mississippi Railroad Company, the directors at the time are chargeable with notice of the time, place, and manner of the location of the road.

City of Aurora *v.* West, et al., 22 Ind. 96.
Aspinwall, et al. *v.* The Ohio and Mississippi R. R. Co., 20 Ind. 493.

Now, this is the determination of the Supreme Court of Indiana upon a question of local law relating to the organization of this railroad company, and is binding on this court. So

Leffingell *v.* Warren, 2 Black. 603.
United States *v.* Morrison, 4 Pet. 137.
Greene *v.* Lessee of Neal, 6 Pet. 300.

It is not like the cases of *Wood* v. *Lawrence Company*, and *Brown* v. *Lawrence Company*, for in these it was decided that

the location of the road was not a condition precedent. The terms in which this power is created, clearly confine it to "any chartered company for making roads to the city," and the determination of the Supreme Court of Indiana in the case is certainly correct.

Now, this replication does not show any subsequent location of the road to the city; and, in this respect, the case differs widely from that on the Dearborn Circuit so pleaded as that fact was set up in the first paragraph of the defense, and in the reply to the second. As the location of the road to the city was a condition precedent, it would not have availed had the plaintiffs shown that the road was subsequently located to the city of Aurora, against the proof which might be offered in the case as to the manner in which the railroad company obtained the bonds and then refused to issue the stock until it had become really worthless. But there is no such allegation.

Starin *v.* Town of Genoa, 23 N. Y. R. 445.
Clark *v.* The City of Janesville, 13 Wis. 418.
Rochester *v.* Alfred Bank, 13 Wis. 440.
Delafield *v.* State of Illinois, 2 Hill, 160.
Same *v.* Same, 26 Wend. 192.

There can be no ratification where there is a total want of power to do the act ratified.

Treadwell *v.* Commissioners of Hancock County, 11 O. St. R. 191, 192.
The Town of Rochester *v.* Alfred Bank, 13 Wis. 438.
City of Montgomery *v.* M. & W. P. R. Co. 31 Ala. 88.
The Penn., Del. & Md. St. N. Co. *v.* Dandridge, 8 Gill & Johns. 319.

See quotations on pp. 56 *to* 59.

This plea was then a good plea. Now, the record pleaded to avoid it, does not contain the same issue. There was noth-

ing in that case putting in issue the *bona fides* of the possession of West and Torrence.

As has been before stated, that case went to the Supreme Court, and is reported in 9 Ind. 86. It will there appear that the question now raised by this plea, formed no part of the case in the Supreme Court. Whereas, it was the very case presented to that Court in the case found in this record, and reported in 22 Ind. 96, and wherein the Court between these same parties in reference to these bonds, has held this plea good.

The record in the case No. 61, see Appendix, p. 35, is very much like that in this suit, in this regard; much more like it than was the record in the case pleaded, and which is referred to in 9 Ind. 86. In that case, the reply contained an allegation that the Ohio and Mississippi Railroad Company was located and completed to Aurora, before the issuing the bonds.

See the first reply, and the rejoinder to the second reply, pp. 50, 51, *and* 52 *of the printed record.*

It did not set out, as does this third plea, that the railroad company had not determined to locate the road to Aurora, when the stock was subscribed for and the bonds issued.

And the Supreme Court decided the case upon the express ground that there was no such allegation.

So that in this regard, as well as that relating to the notice to West and Torrence, and the *bona fides* of their possession, the record pleaded did not present for adjudication the same question which is presented by this third plea.

I maintain that the Court erred in overruling the demurrer to the sixth replication, and that it was not a good plea of estoppel to the matter in the third plea.

V.

THE EIGHTH REPLICATION.

This is a replication to the fourth plea. That plea avers that the bonds were made and issued by the city of Aurora, and that the Ohio and Mississippi Railroad Company obtained them and held them in part payment of $50,000 of stock, made by the city council. That the city was, at the time of said subscription and the issuing of said bonds, a municipal corporation, with no power to take such stock, or issue such bonds, until they were required so to do by a majority of the qualified voters of the city, at an annual election, expressing that they were in favor of such subscription. That a majority of the voters had not, at an annual election, so expressed themselves, *and that the plaintiffs, when they obtained possession of the said bonds, had notice of these facts.*

This plea raises the question whether this vote was not a condition precedent to any power on the part of the city to subscribe to this stock and issue the bonds.

The Supreme Court of Indiana, in the case so often referred to between the parties, has so held.

See printed record, p. 197.

As that was the construction of a local act of Indiana, that would seem to be enough for this Court, upon well-recognized principles.

But there can not be any doubt upon the subject.

The language of the charter is to this effect.

Language creating a condition precedent to any power on the part of the city to subscribe for stock and issue bonds to pay for it, could not be more clear and explicit.

City of Aurora *v.* West, et al., 22 Ind. 96.
Hopple *v.* Brown Township, 13 Ohio St. 324.
Beckle *v.* Union Township, 15 Ohio St. 445.
Clark *v.* The City of Janesville, 13 Wis. 418.
Town of Rochester *v.* Alfred Bank, 13 Wis. 439.
Starin *v.* Town of Genoa, 23 N. Y. 445.

The taking of stock in such a corporation, and the issuing of bonds therefor, is entirely foreign to any of the ordinary purposes of such a corporation.

City of Aurora *v.* West, et al., 22 Ind. 96.
Goshen Township *v.* Shoemaker, et al., 12 Ohio St. 628.
Hopple *v.* Trustees Brown Township, 13 Ohio St. 324.
Beckel *v.* Union Township, 15 Ohio St. 445.
Clark *v.* City of Janesville, 13 Wis. 418.
Town of Rochester v. Alfred Bank, et al., 13 Wis. 438.
Starin *v.* Genoa, 23 N. Y. R. 450.

They can only do it by virtue of some special and enabling act.

Halstead *v.* Mayor of New York, 5 Barb. 224.

Vader v Town of Lima 19 Wis 298
Cook v Hancock Co. 38 Ill 49
Clark v City of Des Moines 19 Iowa 214
Halstead v City New York 3 Corns. 433
This brief 101 39, 62, 70, 74

THE CONDITION PRECEDENT MUST BE SHOWN BEFORE ANY POWER TO SUBSCRIBE STOCK IN THE CITY COUNCIL IS RAISED.

And if, by such act, a condition precedent is required before the power arises, such condition precedent must be shown before any such power can be assumed. See

Beckel *v.* Union Township, 15 Ohio St. 445.
Starin *v.* Town of Genoa, 23 N. Y. R. 450–452.
Woods v. Lawrence County, 1 Black. 409.
Veder *v.* Town of Lima, 19 Wis. 292.

In the case of *Beckel* v. *Union Township*, the Court say:

"The grant of power to the trustees was contingent only, and until the proper contingency arose, they were wholly destitute of authority in the premises. That the township can not, in such case, be bound by the unauthorized acts of its trustees, was expressly held in the case of *Hopple* v. *Brown Township*, 13 Ohio St. Rep. 324. And we think the doctrine is but a logical deduction from undoubted general principles." 15 Ohio St. 445, 446.

In the case of *Starin* v. *The Town of Genoa*, the subscription to the stock of the railroad company depended upon the assent of two-thirds of the voters.

The Court say:

"Evidence of such assent was therefore necessary as the basis and foundation of the right to contract the debt and execute the bonds in question. Such evidence was not given.

* * * * * * * * *

These views lead to the conclusion that it was incumbent on the plaintiff to prove that the written assents given in evidence

had actually been signed by the requisite number of tax-payers designated in the act, and that the omission to provide such proof is fatal to the recovery." 23 N. Y. R. 450–452.

In *Woods* v. *Lawrence County*, the Court say:

"It is true, when a charter is given for franchises or property to a corporation, which is to be brought into existence by some future acts of the corporators, that such franchises or property are in abeyance until such acts shall have been done, and then they instantaneously attach." 1 Black. 409.

In the case of *Veder* v. *The Town of Lima*, the Court say:

"There may have been a valid election and no record made, or the record lost or destroyed. In these and like cases, the town might still be bound, but the burden of proving the facts would be cast upon the holders of the bonds." 19 Wis. 292.

And all persons are put upon notice as to the performance of such condition, and can not claim to be *bona fide* purchasers unless the power has arisen by the performance of such condition.

Gould *v.* Town of Sterling, 23 N. Y. R. 464.
Veder *v.* The Town of Lima, 19 Wis. 292.
Goshen Township *v.* Shoemaker, 12 Ohio St. R. 628.
Branham *v.* Mayor of San Jose, 24 Cal. 604.
Wallace *v.* Mayor of San Jose, 29 Cal. 188.
Halstead *v.* Mayor of New York, 5 Barb. 224.
James *v.* The Cincinnati, Hamilton & Dayton R. R. Co.

The council do not and can not create the power. That is done by a vote of the qualified voters. The city council, therefore, can do no act whatsoever upon the subject until this condition precedent has been performed. There is no estoppel, and there has been no ratification of these bonds. And if the city has no original power to issue the bonds, they have none to create evidence of it or estop the city from denying it.

City of Montgomery *v.* Mont. & W. P. R. Co., 31 Ala. 88.
Penn. Del. & Md. St. Nav. Co. *v.* Dandridge, 8 Gill & Johns. 319.
Town of Rochester *v.* Alfred Bank, 13 Wis. 438.
Treadwell *v.* Commissioners, 11 Ohio St. R. 191, 192.

There are cases where the law giving power has created a board of officers to pass upon this question, or provided for certain evidence of the act done, in which the corporation might be bound by the evidence. In such case, the city might be bound; that is, by reason of the law providing such a tribunal for the purpose, or that certain evidence should be conclusive.

Veder *v.* Town of Lima, 19 Wis. 290.
State ex rel. Garrett *v.* Van Horne, 7 Ohio St. 330.
Bissell *v.* Jeffersonville, 24 How. 290.
State ex rel. Aspinwall *v.* Knox County, 21 How. 544.
Treadwell *v.* Commissioners, 12 Ohio St. R. 597.
Treadwell *v.* Commissioners, 11 Ohio St. R. 191, 192.
Bank of Rome *v.* The Village of Rome, 19 N. Y. R. 24.
Royal British Bank *v.* Tarquand, 6 El. & Bl. 327.
Maclae *v.* Sutherland, 28 Eng. L. & E. 114.

NO ESTOPPEL IS SHOWN BY THE EIGHTH REPLICATION.

Now, what is shown in this eighth replication that should estop the city of Aurora from proving that there was no such vote as was required—or, in other words, that there was no authority of the then council to take the stock or issue the bonds?

It is alleged by way of estoppel—

"That in and by each of said bonds, the said defendants acknowledged that each bond was issued in accordance with the eighteenth section of the charter of the city, and at the time they became the holders and bearers of said bonds and coupons, they relied upon said declaration, and believed it to be true."

The exact terms of the bonds, as shown in proof, are as follows, to wit:

"This bond is issued in part payment of a subscription of fifty thousand dollars by the said city of Aurora to the capital stock of the Ohio and Mississippi Railroad Company, by order of the common council of the city of Aurora, on the 28th of September, 1850, *in pursuance* of the eighteenth section of an act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter, passed by the General Assembly of the State of Indiana, and approved February 15, 1848."

The plea sets up the record, and that contains the bond; the words of the bond are not those of the plea. The words, *in pursuance* of the eighteenth section, mean, following, or, by virtue of that section; whereas, the words, *in accordance* with the eighteenth section of the charter, mean in conformity with that section, and the first does not assert that the section has been followed.

But aside from this difference, the bond directly refers every body to all the power the city had, and puts them upon inquiry whether the conditions which raised the power had been performed.

The plea charges that West and Torrence had notice that a majority of the qualified voters had not expressed their assent at an annual election. This replication does not therefore join issue upon that fact in terms. If it did, it would not be a good plea in avoidance.

It is enough that the plea charges them with notice.

If they had notice of the want of the vote, this declaration could be no estoppel.

To constitute an estoppel, the party pleading it must not only be ignorant of the truth, *but be without the means of obtaining it.* No matter what he believed, he must not be put on inquiry by any suspicious circumstances.

The law upon this subject is well expressed by FIELD, C. J., in the case of *Biddle Boggs* v. *Merced Mining Co.* 14 Cal. 367.

"It must appear, *first*, that the party making the admission by his declarations or conduct, was apprised of the true state of his own title; *second*, that he made the admission with the express intention to deceive, or with such careless and culpable negligence as to amount to constructive fraud; *third*, that the other party was not only destitute of all knowledge of the true state of the title, but of the means of acquiring such knowledge; and *fourth*, that he relied directly upon such admission, and will be injured by allowing its truth to be disproved. These qualifications in the application of the doctrine will be found fully sustained by the authorities. There must be some degree of turpitude in the conduct of a party before a court of equity will estop him from the assertion of his title."

In the case of the *Commonwealth* v. *Moltz*, 10 Barr. 531, BELL, J., in delivering the opinion of the Court, says:

"In all these cases, there is some ingredient which would make it a fraud in the party to insist on his legal rights: per SERGEANT, J., in *Crest* v. *Jack*, 3 W. 238. It is the presence of this fraud, either in the intention of the party, or the effect which would be worked by permitting him a negation, that distinguishes this species of estoppel from what was so considered by the old common law. But it is obvious there can be no such fraud *where the purchaser or other actor was, or ought to have been, acquainted with the subject of his action, or even had the means of knowledge and neglected to avail himself of them.*"

In reference to the particular language of this bond as an estoppel, I will quote from a very learned judge of Ohio, who

has pointed out the true distinction and summed up the whole matter in a few words. I mean JUDGE GHOLSON, of the Supreme Court of Ohio. In *Treadwell* v. *Commissioners*, 11 Ohio St. 191, he says:

"To the mere facts of the putting the bonds in circulation, and the recital in them of the authority under which they were issued, and independent of the provision of the act hereafter to be considered, we are not prepared to give the conclusiveness which is claimed in this case. The decision of the Supreme Court of the United States must rest on the assumption that it was competent for the Commissioners of Knox County, by some act of their own, to make their authority complete, an assumption we are not at liberty to make in this case. This is shown by the case on which that Court relies—*Royal British Bank* v. *Tarquand*, 6 Ell. & Black. 327—in which case it is said that parties dealing with joint stock companies 'are bound to read the statute and the deed of settlement: but they are not bound to do more. And the party here, on reading the deed of settlement, would find, not a prohibition from borrowing but a permission to do so on certain conditions. Finding that the authority might be made complete by a resolution, he would have a right to infer the fact of a resolution authorizing that which on the face of the document appears to be legitimately done.' The resolution referred to, the case shows to be a resolution of the company which had been informally and irregularly made. If the authority could not have been made complete by any action of the company with which the party was dealing, but depended upon a condition required by the statute, the decision would have been different. The principle on which the case was decided is shown by the report of it when before the Queen's Bench; 5 Ell. & Black. 248. It was a case of irregularity in the proceedings of a company having power to do the act, and an excess of authority on the part of its directors, which it was held should not affect a third person dealing with the company in good faith. The other case cited in the opinion of the Supreme Court of the United States—*Maclae* v. *Sutherland*, 28 Eng. L. & E. 114—is there stated to be a case of irregularity in framing a security.

"The distinction between such cases and those where an act is illegal, or there is a want of power, is manifest."

In the case of *Veder* v. *The Town of Lima*, after discussing the above case, and the decision of the Court upon the subject, and approving the case in 11 Ohio, the Court say:

"But I am not disposed to stop here. I go further, and say that I can not assent to the broad doctrine of those cases as to the effect of such recitals. I think the error in them consists in the want of a proper discrimination between public and private corporations—corporations, the records of whose proceedings are open, and subject at all times to the inspection of the public; and those which are not, and where the public must trust to the acts and representations of their agents. With all due respect for a court of such great learning and ability, I must say that I think it erred in applying the doctrine of the English courts (which applied them only to corporations whose records are not public) to our municipal bodies, whose records are public." 19 Wis. 295.

The remarks of DIXON, C. J., in the Supreme Court of Wisconsin, in another case, are also in point. He says:

"The first point is obviously bad. The appellants do not propose to deny the recitals of the bonds, conceding the instruments to be such, but to show that they are not bonds, and therefore that there are no recitals by which an estoppel can be created. They propose to go back of the objection taken by the respondents, and to show that the foundation upon which it must rest, does not exist. The supervisors could not issue the bonds without previous legislative authority, and if such authority was wanting, their action was void. To claim, therefore, that their recitals, that they had such authority, are conclusive as against a proposition to show that they had not, is equivalent to claiming that they could act and could bind the towns, even though they possessed no such power, which is absurd. It is to make the question of authority wholly immaterial, and to say that the unauthorized action of the board is as obligatory and effectual as that which was authorized. The rule that a party is estopped from disputing a fact which he has solemnly admitted by deed, assumes the existence and validity of the deed, but it does not preclude him from showing that he never made it." 13 Wis. 438.

This is directly in point; for, in the case before the Court, the city council had no power until after the vote of the people had raised it, in accordance with the eighteenth section of the charter, and an examination of that section would have put the plaintiff on inquiry as to the performance of the conditions precedent.

Upon this point I quote from the late and well-considered case of the *City of Montgomery* v. *M. & W. P. R. Co.* The Court say:

"It is further urged in favor of the maintenance of this action, that inasmuch as the plankroad company has had the benefit of the city bonds, and obtained them on the faith of the contract which is the subject of this suit, the obligors in this bond should be held estopped from disputing the authority of the city to make the contract. If this doctrine be established, then corporations, no matter how limited their powers, may make themselves omnipotent. They have only to induce persons to contract with them beyond the scope of their powers, and their very usurpations have the effect of conferring powers on them which the legislature have withheld. A proposition so erroneous can scarcely need argument to overturn it." 31 Ala. 88.

And in *Penn., Del. & Md. St. Nav. Co.* v. *Dandridge*, the Court say:

"It has been urged that the defendants, having entered into this contract, are estopped from denying their competency to have done so. To the doctrine of estoppel applied to such cases, we can not yield our assent. If the corporation is estopped from denying its power, the estoppel operates with like effect upon those who contract with them, and the result would be that no matter how limited the design and powers of a corporation may appear in its charter, practically it is a corporation without limitation as to its powers. Such a doctrine at this day is dangerous to the interests of the community, and is at war with the modern decisions upon the subject." 8 Gill. & Johns. 319, 320.

These decisions are directly in point. They show that the

subsequent building of the road to Aurora can not give force to the bonds if there was a want of power before their issue for the subscription to the stock of the company and the issue of the bonds. They were only authorized to do these things upon a condition precedent. Without such condition they had no power to act whatsoever. The question of ratification, presented by these authorities, and by the following pages, was presented to this Court, in *Havemeyer* v. *Iowa County*, 3 Wall. 295, by the third question presented to this Court for decision upon a division of the judges of the Circuit Court, and the Court declined to decide it, or give any indication of opinion thereon, upon the ground that the question, as presented, was but an abstract proposition.

Second. But this replication is bad for another reason. Unless West and Torrence were *bona fide* holders for value, they can not set up this recital in the bonds as an estoppel. It is only in favor of such that this rule can hold, if it holds at all. I do not understand this Court to have gone further than that.

Now, this replication does not show West and Torrence to have been *bona fide* purchasers.

It is not alleged in any way. The replication does not either in terms so aver or set out that anything whatsoever was given for the bonds.

This plea is not favored. It requires "certainty to every intent in particular," which means, as Mr. Stephens says, that the pleader shall anticipate his opponent's objections, and negative them. Nothing can be presumed in its favor, or gathered from inference or argument.

See quotations on pp. 28 *and* 29 *of this brief.*

In a declaration, a consideration might be presumed until the contrary was shown. A declaration admits a defense, and therefore such a presumption may have its way; but an estop-

pel shuts out the truth, and therefore nothing can be presumed in its favor or left to argument or inference.

Where, then, this replication endeavors to prevent the defendants from showing a total want of authority to take this stock and issue these bonds, the plea must set up, with the highest degree of certainty, all the facts requisite to show the plaintiffs to be *bona fide* purchasers for value.

See pp. 18, 28, *and* 29 *of this brief.*

This is not done in this replication.

Third. This fourth plea negatives the condition precedent upon which any power upon the subject could arise in favor of the city council. How can this replication then estop the city by anything the city council might say or do? An agent can not get authority by his assertions that it has been granted. That assertion is not, indeed, even evidence against his principal.

Story on Agency, 6th Ed. by Bennett, sec. 136.
Brigham *v.* Peters, 1 Gray, 145.
Mussey *v.* Beecher, 3 Cush. 517.
Note of Professor Dwight, 1 Am. Law Reg. N. S. 297.

In *Mussey* v. *Beecher*, this rule is thus expressed:

"That no one is bound to deal with the agent. Whoever does so is admonished of the extent and limitation of the agent's authority, and must, at his own peril, ascertain the fact, upon which alone the authority to bind the constituent depends."

In Story on Agency, it is thus expressed:

"Thus the fact of agency or the extent of the authority, can not be proved by the declarations of the alleged agent, although accompanied by his acts as agent."

In a note of Professor Dwight upon the case of *Gould* v. *Town of Sterling*, found in 1 American Law Register, N. S. 297, is found the following language upon this point:

"It seems entirely clear that no representations by an agent can ever establish the fact of agency. This proposition is true without qualification, both in law and in equity. If a person, who is not in fact authorized, represents that he has power to execute a promissory note for another, the instrument, so far as the supposed principal is concerned, is utterly void. The negotiability of the note will have no effect upon the question, as the inquiry turns upon the existence of the note itself. The term *negotiability* presupposes the existence of an instrument made by a person having *capacity* or *power* to contract in that particular manner. Instruments made by infants, married women, insane persons, or others without capacity to make binding contracts, gain no additional validity because they may assume the form of negotiable paper. It is entirely immaterial whether the incapacity or want of power is general, *or extends only to the particular act in controversy.*"

A man that has no authority can not delegate any by anything he may say or do; and if the city had no authority to take stock until after this vote, clearly she could not make valid the bonds by a statement of the mayor and clerk, and that the bonds issued were issued in pursuance of the 18th section of the charter. If it could be so, the officers of a city might obtain power by the mere usurpation of it. This question has often arisen and been decided where it worked much hardship.

McSpeddon *v.* The Mayor of New York, 7 Bosw. 609.
McCracken *v.* City of San Francisco, 16 Cal. 626.
Grogan *v.* City of San Francisco, 18 Cal. 613.
Zottman *v.* City of San Francisco, 20 Cal. 102, 103.

Fourth. Now, I do not deny that there is a certain class of facts in reference to which a city might be estopped as to any matter or thing in which they have a power. The distinction is between things that go to the validity of the power itself, and those that go to matters merely directory in the manner of executing it.

It is thus stated by a learned judge from Ohio, formerly of the Superior Court of Cincinnati, and since of the Supreme Court. I refer to Judge Gholson.

In the case of *James* v. *The Cincinnati, Hamilton & Dayton Railroad Company*, decided in the Superior Court of Cincinnati, he says:

"Powers conferred upon corporations are of two descriptions: some are general, others special and limited. Some have reference to the mode in which acts are to be done, and are merely directory; others are in the nature of a limitation of power, or a condition precedent. Third persons, acting in good faith, are not usually to be affected by an excess or violation of the former, on the part of the company; but of the latter they are. The act itself must be regarded as illegal, and knowledge is presumed." * * * * *

"Where an act is in itself illegal, the question of knowledge does not properly arise. Parties contracting as to such an act, must be supposed to know its illegality. And this is the case as to those restrictions on the powers of a corporation, which are in the nature of conditions precedent, or limitations shown by the express provisions of its charter, or by inference from its terms. If, upon a reasonable and fair construction of the act of the Legislature, from which the corporation derives its powers, an intention appears to prohibit that which is the subject of a contract—to exclude it from the general powers of the corporations, or *to provide that it shall be done only in a specified mode*, it necessarily follows that the contract can not be sustained. It need not be averred or proved that both parties had knowledge of such an illegality, for being made illegal by a law of the land, it is supposed to be known, and ignorance would be no excuse."

Here is the distinction. It is precisely that found in the case of the *Royal British Bank* v. *Tarquand*, and in *Maclae* v. *Sutherland*, cited by this Court in *Commissioners' of Knox County* v. *Aspinwall*, 21 How. 546.

There is another class of cases that holds that where a special power is given to a municipal corporation, and a specific mode

of executing it is provided, that the city can not execute it in any other way, and these cases seem to me to be sound law.

McSpeddon *v.* New York City, 7 Bosw. 609.
Grogan *v.* San Francisco, 18 Cal. 610.
Zottman *v.* San Francisco, 20 Cal. 102, 103.
Pimental *v.* San Francisco, 21 Cal. 366.
James *v.* The Cincinnati, Hamilton Dayton R. R. Co.
Myrick *v.* City of Lacrosse, 17 Wis. R. 445.
Kneeland *v.* City of Milwaukee, 18 Wis. R. 417.
Head *v.* Providence Insurance Company, 2 Cr. 168.

It is not necessary for the purposes of this case to go that far, for the plea in question negatives any authority which the city council had in the premises. And if they had no power whatever upon the subject, nothing which they could say, do, or certify, could create such power. If they had no authority to issue the bonds, or to do anything about them, it will trouble a lawyer to find any legal principle by which they could, by the form of the bond, or by any certificate thereon, raise such power, or estop the city from denying it, *or any power by which an agent, limited or general, can ratify his own unauthorized act.*

Fifth. Much is said in the reports about the dissenting voters lying by and permitting the bonds to pass into the hands of innocent purchasers, as a reason why the city should be estopped. It seems to me that this matter has been pressed out of its due and proper proportions.

Ordinarily, the dissenting voters have very little knowledge of the issuing of these bonds, or of their sale. They are generally printed in New York city, signed by the city officers, and returned to New York for sale: and it is asking a good deal of a man who was opposed to the issuing of the bonds,

and believed their issue to be wholly unlawful, to go to the expense of testing this matter in advance.

Why may not such a man say, that the parties who take these bonds generally get them at a large discount; that they know that they are issued by corporations having no general power to issue them, and whose power is to be found in their charters; and that they are bound to take notice whether there is any such power or not? Why may not such voters conclude that the parties will examine and refuse to purchase, if there is no power to issue? And they may also say that the parties who deal in these bonds are generally sharp enough to take care of themselves.

I think the following remarks of DIXON, C. J., of Wisconsin, have very considerable force. He says:

"It would be idle to say that they must commence a series of suits for the purpose of apprising third persons of that which they already know; and it was clearly time enough for them to resist or deny, when the validity of the bonds was seriously asserted, and an effort made to collect them, which for aught they knew, or might reasonably presume, would never be done." 13 Wis. 441.

VI.

THE TENTH REPLICATION.

This is a replication to the third, fifth, and sixth pleas.

The third plea avers facts showing that the condition precedent of a road to Aurora had not been performed when the stock was subscribed for and the bonds issued.

The fifth plea avers substantially the same thing, with other allegations.

The sixth plea does likewise, but shows that the Ohio and Mississippi Railroad Company was not chartered to build a road to Aurora, and was not authorized so to do. They all aver notice to the plaintiffs.

Now, what is the matter pleaded as an estoppel?

It is a resolution of the council of the city to the effect, that as the qualified voters of the city had, by a large majority *of the votes cast*, signified their assent to such subscription of stock, in pursuance of the eighteenth section of the city charter, they did, therefore, authorize John D. Haynes, then mayor, to subscribe the stock, and setting out the resolution and his subscription of the stock at the foot thereof; that before the city received the said one thousand shares of stock, or issued the bonds, and at the time of the delivery of the same to the said company, the said company constructed the road to Aurora, and was engaged in completing it west to Vincennes.

It will be observed that the pleas do not admit a receipt of the stock by the city or its officers, and this replication does not allege that they do.

Now, this is no answer to these pleas, for several reasons—

First. It admits that at the time of the subscription of stock, the condition precedent was not performed, to wit: there was no such company or road as the charter of the city required to authorize the subscription, and therefore the subscription was void. And if the subscription was void for any cause, it is certain that there was no authority to issue these bonds.

It was one thing to have a deliberate and unembarrassed vote of the people, before any of their officers were involved

in a subscription, and quite another for the council to pass this resolution; and without such vote and the assent of the majority of the qualified voters upon their tickets, there could be no power whatsoever.

Aurora *v.* West, et al., 22 Ind. 96.
Clark *v.* City of Janesville, 13 Wis. 418.
Veder *v.* The Town of Lima, 19 Wis. 298.
McSpeddon *v.* New York, 7 Bosw. 610.
Hopple *v.* Brown Township, 13 Ohio St. 324.
Beckel *v.* Union Township, 15 Ohio St. 445, 446.
McCracken *v.* San Francisco, 16 Cal. 619.
Branham *v.* Mayor of San Jose, 24 Cal. 604.

This order does not ascertain or set forth that a *majority of the qualified voters* had so expressed themselves—it simply avers that a *large majority of those voting* had so done, which may be a very different thing as the Supreme Court of Indiana has determined between these parties.

See printed record, p. 198.

It is, indeed, an implied admission that they had not so voted.

The qualified voters are a well-defined body. It was they who were to pay these bonds, if issued, and the law proceeded upon the idea that if a majority of them would express themselves upon their tickets in favor of the subscription, then the council might make the subscription and bind them all. *But it did not provide that if a majority of those voting so expressed themselves*, that the council should have any such power. And this is not accidental. See the tenth section of the charter, where the council were authorized to sell the city property, if a *majority of those voting* at such election required it. If there were three hundred qualified voters of the city, and only fifty voted at the election, and forty of these were for

the subscription, all of which the resolution states would be true; and yet, clearly, the power would not be raised under the eighteenth section of the charter. So far as this resolution found anything then, or shows anything, there was no such power raised, and there is nothing in the city charter that makes the council a board to pass upon such a matter.

And here I would also particularly call the attention of the Court to the case of *Veder* v. *The Town of Lima*, 19 Wis. 286, determined by the Supreme Court of Wisconsin in 1865.

In many of its features, it is very similar to the case now before the Court. By the first section of the act, the supervisors of the towns through which the Taychedah and Green Bay Plank Road might "be located," or had "been already located," by "the consent of a majority of the legal voters of the town, to be expressed as provided" in the act, were "authorized to subscribe in the name and for the benefit of such town, to the capital stock" of such company, "an amount not exceeding twenty thousand dollars."

By the second section, the supervisors were authorized to borrow money upon the bonds of the town, issued and signed by them to pay for said stock.

The sixth section of the act provided, that upon the written application of ten electors requesting such subscription, the supervisors of the town should post notices, ten days in advance, setting out the time, place of an election, and the amount of stock, etc., which election was to be conducted according to the general election laws.

The seventh section provided that the supervisors, or one of them, should make affidavit of the posting of such notices, which, with the application, was to be deposited with the town clerk, and certified copies were to be conclusive evidence in all courts of the facts contained in the same.

By the general law of the State, it was provided that the inspectors of elections should make a statement in writing of the votes cast, and certify the persons elected, which was to be recorded by the town clerk, who had custody of the records of the town, and whose certified copies thereof were evidence.

An election was had, and subsequently the supervisors issued the bonds in question, which, after reciting the act aforesaid, added:

"And whereas, *in pursuance of the statute aforesaid*, the legal voters of the town did, on the 24th of November, A. D. 1855, vote, authorizing the supervisors of the town of Lima as aforesaid, to subscribe to the capital stock of the Taychedah and Green Bay Plank Road the sum of seven thousand dollars; and whereas, on the 20th of December, 1855, *in pursuance of the determination of the legal voters as aforesaid, of the town aforesaid*, the said supervisors of the town aforesaid did subscribe to the capital stock of the Taychedah and Green Bay Plank Road the sum of seven thousand dollars as aforesaid: *Now, therefore, for the purpose of carrying out the provision of the act* aforesaid of the Legislature of the State of Wisconsin as aforesaid, *and in accordance with the determination of the legal voters of the town of Lima as aforesaid*, KNOW ALL MEN, *etc.*"

This certificate in general terms indicates a full compliance with the act; whereas, that pleaded in this tenth replication does not purport to set forth that "a majority of the qualified voters" had required the taking of the stock, as was required by the eighteenth section of the charter, but only that "a majority of those voting had so done"—a very different thing, as is intimated by the Supreme Court of Indiana.

See printed record, p. 198.

The plaintiff, Veder, was a *bona fide* holder of one of these coupons. The defense of the town was that the elec
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the subscription, all of which the resolution states would be true; and yet, clearly, the power would not be raised under the eighteenth section of the charter. So far as this resolution found anything then, or shows anything, there was no such power raised, and there is nothing in the city charter that makes the council a board to pass upon such a matter.

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The plaintiff, Veder, was a *bona fide* holder of one of these coupons. The defense of the town was that the election had not been held in all respects in accordance with the law, in this, *that the notices of the election had been posted in only two*

public places, and that they had not been signed by the supervisors; that no affidavit had been made by the supervisors of the posting of such notices and filed with the town clerk, and that the bonds were never delivered to any one with intent to put them in circulation, or otherwise than for safe keeping.

The Court decided that the plaintiff could not recover.

I take the following from the very able opinion given by DIXON, C. J.:

"The election and consent of the majority of the voters was a condition precedent to the right of the supervisors to execute the bonds or *take any subsequent step.*" P. 286.

* * * * * * * *

"Under the act, the application, affidavits of posting the notices, and statement and determination of the inspectors, duly deposited and recorded in the clerk's office, became their written authority to act for and bind the inhabitants of the town. Persons reading the act must see and know these requirements; and seeing and knowing them, *must also see and know the record.*" P. 291.

"The absence of the record, and more especially of the affidavit of the posting of the notices, is a circumstance which should have put the purchaser upon inquiry. Being bound to look to the record, and looking at it, *and not finding there the required evidence of the most important step, he takes the bonds at his peril.*" P. 292.

After considering the cases in this Court upon the effect of the certificate, and the cases of *Treadwell* v. *The Commissioners*, 11 Ohio St. R. (*see quotation on p. 57 of this brief*), and that of *Gould* v. *The Town of Sterling*, the learned judge proceeds:

"That this recital was unauthorized, there can be no doubt. *There is nothing in the statute requiring or permitting it.*"

* * * * * * * *

"But I must differ with them (this Court), and must hold that *whether the power conditionally conferred by the statute was ever vested in the supervisors, is a question open to investigation and contradiction.*"

* * * * * * * *

"So here, the question whether this bond is the bond of the town or not, depends *not upon the recital, but upon the fact whether a majority of the legal voters, voting at an election held in the manner prescribed* by the act, ever gave their assent to it. It is a question of jurisdiction on the part of the supervisors. To say that the supervisors had the power to bind the town *because they recited that they had*, is assuming the whole issue. It is reasoning in a circle. It is like the man pulling to overcome the law of gravitation. It can not be done. The real facts lie back of all this, and it is to them that we must go to ascertain whether it is the bond of the town or not." P. 298.

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"If this instrument is the bond of the town, it is because the act of the voters have made it so. For, as was determined by this Court in a similar case, *The Town of Rochester* v. *The Alfred Bank*, 13 Wis. 439, the voters are the principals, and the supervisors the agents, having no power to act except upon the conditions specified in the statute." P. 299.

The learned judge who gave the opinion in this case, seems to think that the Supreme Court of Wisconsin differs in some respects from this Court. A very critical examination of the cases decided by this Court will, I think, show that there is not such difference of opinion; for, when the same question decided in this case by the Supreme Court of Wisconsin came before this Court, in *Havemeyer* v. *Iowa County*, 3 Wall., the Court expressly decline to decide it. If it had already been determined, the opinion given in that case upon that point would hardly have been given. The distinction taken by JUDGE GHOLSON, between things which go to the power itself, and those which are merely directory in its execution, explains much that is apparently contradictory between the decisions of this Court upon these points, and the other Courts named.

The question involved in this case has undergone a great deal of examination in the Supreme Court of Illinois, and the same conclusion has been arrived at as in the courts of Ohio and Wisconsin.

Marshall County *v.* Cook, 38 Ill. 49.

In that case, the law authorizing the issue of the bonds required a vote of the people. An election was called by the county court of the county, whose duty it had been to call such elections. A short time before the issuing of the bonds, the county of Marshall had passed under the law for township organizations, which made it the duty of the supervisors of the county to call the election. This was the law in existence when the bonds were issued. Acting, however, upon the prior election, which showed the required vote, the supervisors of the county issued the bonds to pay for the subscription of stock. Interest had been paid on these bonds, and taxes levied and collected to pay it.

The question raised was, whether these bonds were valid in the hands of *bona fide* purchasers?

The Court say:

"The uttering of county bonds involves the necessity of levying taxes for their payment, and to that extent deprives the citizen of his property. Under the fundamental principles of our Government, that can not be done except by authority of law; nor is it any answer to say the election resulted in a majority in favor of issuing the bonds, as majorities are as powerless to divest a person of his property as are minorities. That can, by either, only be done in the manner prescribed by law; and the election being illegally called, the vote failed to confer the power.

"If, then, the bonds were issued without authority, they were void, and if void, the mere levy of taxes and payment of interest could not render them valid. In the case of *Schuyler County* v. *Farwell*, 25 Ill. 181, the board of supervisors had levied and collected taxes for the payment of interest, several instalments of which had been paid, and still it was held that the bonds being void, the holder could not recover. We, in this case, make the distinction between the want of power in public officers to perform an act, and a case where they, having power, execute it defectively. In the former case, acquiescence and treating it as having been performed in pursuance of authority, does not render the act valid, whilst in the latter case, the defects may be of such a character that the acts might become valid and binding." 38 Ill. 58.

The questions here raised as to these municipal bonds, issued in payment of railroad subscriptions, have been very fully and ably considered within the last six years, in the Supreme Court of Iowa, and the views here expressed are sustained by these decisions.

State ex rel. *v.* Wapello, 13 Iowa, 402, 406.
Myers *v.* County of Johnson, 14 Iowa, 48.
McMillan *v.* Boyle, 14 Iowa, 107.
Rock, et al. *v.* Wallace, County Judge, 14 Iowa, 593.
Smith *v.* Henry County, 15 Iowa, 386.
Clark *v.* City of Des Moines, 19 Iowa, 209.

We have not, heretofore, referred to them, not through want of respect for that tribunal, or the decisions in question, but, because we knew that the Court was familiar with the greater part of these decisions. But we desire here to call the attention of the Court, specially, to the case of *Clark* v. *The City of Des Moines*, 19 Iowa R., as a case fully sustaining the views which we have taken in this brief, and one which is well worthy the examination of this Court. That the Court may judge of the bearing of the case upon the questions raised in this record, we quote the following passage from the learned and exhaustive opinion of the Court, delivered by Judge Dillon:

"So the bill of exceptions recites that 'the defendant, on the trial, offered to show by the record of the proceedings of the city council, that all of said warrants were issued *without any authority from the said city council*, and without any vote of said council authorizing the same,' but this evidence the court refused to receive, because the warrants were negotiable, and there was no offer to show that the plaintiff took them with notice of such defect or irregularity.

"This view of the law is, we think, erroneous. If my name be signed to a promissory note by a person representing himself to be my agent, but 'without any authority' from me, I am not bound; and I am no more bound because the obliga-

tion has been put in a negotiable form than if it had been put in a form not negotiable.

"And the same rule must and does apply to paper purporting to be issued by the agents or officers of public or municipal corporations. The general principle of law is well known and definitely settled, that the agents, officers, or even city council of a municipal corporation, can not bind the corporation when they transcend their lawful and legitimate powers.

"This doctrine rests upon this reasonable ground. The body corporate is constituted of all of the inhabitants within the corporate limits. The inhabitants are the corporators. The officers of the corporation, including the legislative or governing body, are merely the public agents of the corporators. Their duties and their powers are prescribed by statute. Every one, therefore, may know the nature of these duties and the extent of these powers. These considerations, as well as the dangerous nature of the opposite doctrine, demonstrate the reasonableness and necessity of the rule; that the corporation is bound only when its agents, by whom, from the very necessities of its being, it must act, if it acts at all, keep within the limits of their authority." Pp. 208, 209.

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"Negotiability will not validate obligations which are not binding, because of a *want of power* to issue them." P. 210.

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"It is a familiar and elementary principle that municipal corporations have and can exercise such powers, and such only, as are expressly granted, and such incidental ones as are necessary to make those powers available, and essential to effectuate the purposes of the corporation; and these powers are strictly construed." P. 212.

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"On this question the argument may thus be condensed: There is no express authority to the officers of this city to issue negotiable paper which shall be free from equities in the hands of the purchasers, and the existence of such a power is not necessary as an incident to those granted, or to carry out the purposes and objects of the corporation, and would be attended with abuse and fraught with danger. It should not, therefore, be held to exist as an *implied* power." P. 214.

Second. This resolution can not be held as an estoppel for another reason. It is not pretended that West and Torrence ever saw or heard of it, or were in any way influenced by it in taking the bonds.

It has none of the elements of an estoppel, and the certificate, therefore, can not be held to have that effect. The replication is, in fact, an admission of the want of power when the stock was subscribed, for it admits that there was no such road to Aurora, and indirectly admits that there was no such vote, and is an effort to show a ratification by the delivery of the bonds, after the road was located to Aurora.

THERE HAS BEEN NO RATIFICATION OF THESE BONDS.

This certificate, and the facts pleaded in this replication, can not operate to ratify the bonds for several reasons.

1st. An act void for want of power in an agent can not be ratified by such agent. *See pp.* 71–77 *of this brief.*

2d. The council having had no power to make the subscription when they did it, can not subsequently ratify it, for their power had not been increased in any way at the time.

In *Clark* v. *The City of Janesville*, 13 Wis. 418, the Court say:

"The common council could not originally issue the bonds and make the subscription. It could not contract the indebtedness except upon a condition never fulfilled. If the city authorities had subscribed the stock without an affirmative vote of a majority of the electors, their action would have been

unauthorized, and would not have bound the city. *How, then, can they be said to have ratified and rendered valid these bonds, which they could not have issued upon their own motion? We confess we can not understand how the common council could, by subsequent ratification, render a contract valid which they could not originally make.*" P. 418.

* * * * * * * * *

"The legal voters were to determine at an election held under the charter and in conformity to its requirements, whether the power of subscribing to the stock should be exercised by the city authorities. This was a condition precedent to making the subscription.

"We must therefore hold, that as the common council could not in the first instance subscribe the stock and issue the bonds, without being authorized so to do by an affirmative vote of the electors, they can not by any subsequent act render them binding and obligatory upon the city." P. 419.

McCracken *v.* City of San Francisco, 16 Cal. 626.

Zottman *v.* City of San Francisco, 20 Cal. 102, 103.

In the case of *Zottman* v. *San Francisco*, the Court say:

"As a necessary consequence flowing from these views, a contract not made in the prescribed mode can not be affirmed and ratified in disregard of that mode by any subsequent action of the authorities, and a liability be thereby fastened upon the corporation. Ratification is equivalent to a previous authority. It operates upon the contract in the same manner as though the authority to make the contract had existed originally. The power to ratify, therefore, necessarily supposes the power to make the contract in the first instance, and the power to ratify in a given mode supposes the power to contract in the same way.

"Therefore, where the charter of a city authorizes a sale of city property only at public auction, a sale not thus made is from its very nature incapable of ratification, because it could not have been otherwise made originally. So, where the charter authorizes a contract for work to be given only to the lowest bidder after notice of the contemplated work in the public journals, a contract made in any other way—that is, given to any other person than such lowest bidder—can not be subse-

quently affirmed. Were this not so, the corporate authorities would be able to do retroactively what they are prohibited from doing originally.

"We had occasion, in the case of *McCracken* v. *City of San Francisco*, to give to this subject great consideration, and we there held that where authority to do a particular act can only be exercised in a particular form or mode, the ratification must follow such form or mode, and that a ratification can only be made when the principal possesses at the time the power to do the act ratified. The doctrines there laid down we regard of vital importance for the protection of the interests of municipal corporations; and without an adherence to them, restrictions such as were embodied in the charter of San Francisco—or at present are embodied in the consolidation act—upon the corporate authorities, may be practically disregarded and defeated."

In *Bradley* v. *The City of New York*, 20 N. Y. R. 319, the Court say:

"The action of the common council in confirming the assessment roll can not aid the plaintiff, upon any principle with which I am acquainted. That body could not make the contract originally; and if a lawful one has not been made by the officer to whom that duty was committed by law, *it can not be helped out by any resolution of the council. The action has* no force as an estoppel. It was between other parties, and did not affect the plaintiff in any way."

It is not unworthy of remark here that the courts in Ohio, New York, and California all were making decision upon the same point and almost precisely alike, neither having knowledge that the other had thus decided.

And in the case of *Supervisors* v. *Schenck*, 5 *Wall.* 786, this Court say:

"Ratification is inoperative if the party attempted to be charged was not competent to make the contract in question when the same was made, nor when the supposed acts of ratification were performed, or if the contract was illegal, immoral, or against public policy."

And the Supreme Court of Indiana, in the case so often referred to and which is found in this record, after speaking of the peculiar features of the charter of the Ohio and Mississippi Railroad Company, say:

"In view of this fact, then, that the plaintiffs must be charged with notice, on the question of location, the instruction given by the Court, above quoted, is erroneous, and may have controlled the verdict in the cause. That instruction is erroneous on two grounds:

"1. It goes upon the hypothesis that the bonds may have been illegally issued, and the plaintiffs *bona fide* holders of them, even though that illegality consisted in issuing the bonds for stock subscribed in a road not running to *Aurora.*

"2. It goes upon the hypothesis that the bonds might have been void for illegality of issue, and that fact known to the plaintiffs, and yet the plaintiffs be entitled to recover if they did not know that the people of the city were objecting on that ground.

"This instruction was calculated to mislead the jury. The people would be presumed to be objecting." 22 Ind. 98.

See printed record, p. 198.

It is quite clear that this resolution sets out nothing that can be regarded as an estoppel or confirmation, for the reason that it does not show, or profess to show, that a majority of the qualified voters had expressed their consent thereto upon their tickets at any time, also a condition precedent to any power on the part of the council.

THE CITY COUNCIL ARE BUT SPECIAL AGENTS.

But more than this. The city council is but the agent in this case.

Veder *v.* Town of Lima, 19 Wis. 299.
Wallace *v.* Mayor of San Jose, 29 Cal. 188.
Rogers *v.* Burlington, 3 Wall. 663.
Brady *v.* Mayor of New York City, 2 Bosw. 186.
Branham *v.* Mayor of San Jose, 24 Cal. 604.
McCracken *v.* San Francisco, 16 Cal. 619.
Clark *v.* City of Des Moines, 19 Iowa R. 215.

In *Wallace* v. *Mayor of San Jose*, the Court say:

"The common council were the agents of the corporation, and their authority was special and their power distinctly circumscribed. The corporation could not become bound by the contract unless it was made by the mayor and council in the exercise of the power delegated by the act of incorporation, and within its limits. In dealing with these officers the plaintiff was bound to know the extent of their power, and to see that the condition, on which alone it could arise and subsist, had existence. (*Blum* v. *Robertson*, 24 Cal. 140; *Branham* v. *Mayor, etc., of San Jose*, 24 Cal. 604; *Brady* v. *Mayor of New York*, 2 Bosw. 173; *Swift* v. *City of Williamsburg*, 24 Barb. 427.) The fact that these officers assumed to make the contract and thus bind the corporation, did not create the presumption that they possessed the power which they attempted to exercise, for no officer can acquire power or jurisdiction by the mere assertion of it. (*McMinn* v. *Wheeland*, 27 Cal. 314; *People* v. *Cassells*, 5 Hill, 168; *Harrington* v. *The People*, 6 Barb. 610.)"

In *Brady* v. *The Mayor*, 2 Bosw. 186, the Court say:

"And for a like reason, the defendants can not be treated as ratifying the unauthorized acts of its agents. The difficulty lies not merely in the want of original power in the corpora-

tion itself to make the contract otherwise than in the mode prescribed by the charter. An individual, having power to make a contract, may ratify or affirm it when made by one who, without authority, assumes to be his agent, but if the individual have himself no such power, he can no more bind himself retroactively to its performance, by affirmance or ratification than he could have done so prospectively, in the first instance. The power to ratify *ex vi termini*, implies a power to have made the contract; and the power to ratify in a particular mode, implies a power to have made the contract in that manner." 2 Bow. 186.

In *Branham* v. *Mayor of San Jose*, the Court say:

"It is obvious that the ayuntamiento, being merely the agents of the pueblo, in the language of Mr. Justice Baldwin, 'acting under defined and expressly limited powers,' could not bind the property held in trust by them for community purposes, by any act not strictly within those powers, either by way of contract, or by the mere sufferance of judicial proceedings. Were such the case, the law of corporate power would be made subservient to the adversary will of those in whose hands its temporary exercise is placed. The subsequent judicial proceedings imparted no sanctity to the transaction, nor added thereto any validity in law which it did not previously possess." 24 Cal. 604.

Now, was it ever heard that an agent could ratify his unauthorized act? It is the principal only that can do it. In this case, the city council had no original power. They were authorized to subscribe stock and issue the bonds, only after a majority of the qualified voters had expressed themselves in favor of such subscription at an annual election, and after there was such a road to the city. In this replication, which requires the highest degree of certainty, there is no allegation of any such vote, and no allegation that before the taking the stock and the *issuing* of the bonds, that there was any such road to the city of Aurora. It is, in fact, admitted that there was none such. The allegation is that before the council

received the one thousand shares (a fact not alleged in the plea), and *issued* the bonds, and at the time they were delivered (by whom, pray?) the road had been built, etc. This admits that there was no such road to Aurora when the subscription was made, and therefore that that subscription was not valid. Could the council ratify this? No such power is given them. They have simply power to subscribe after the proper vote. It was not compulsory upon them to do so, and they might not have issued the bonds at the time named in the replication, except for their previous subscription, or then have subscribed for the stock. But having no power to subscribe for the stock when taken, and no power of confirmation (being but limited and special agents, with precise and definite powers fixed by law), the council could not confirm that which was void when done. The "qualified voters" were the principal, but they had no power to bind the people except so far as they were expressly authorized; and having no power to confirm an unauthorized act of their city council, it is difficult to see how *they* even could ratify this subscription.

The replication does not show that the city council confirmed, or would then even have taken the stock. It rather goes upon the idea that they supposed themselves bound by their subscription, and therefore issued the bonds.

It is true the replication avers that the bonds were delivered after the construction of the road to Aurora, but how does that mend matters? The council was not authorized to take the stock until required so to do by a majority of the qualified voters, and had no right to deliver the bonds. Nor is it alleged that the qualified voters of Aurora, or any of them, knew of the issue of these bonds. Nor was the city council authorized as a board to determine any such question.

DUTIES OF PARTIES DEALING WITH MUNICIPAL CORPORATIONS.

I here call the attention of the Court to the law as declared in reference to parties who shall deal with these limited municipal corporations, and with reference to notice.

In the case so often referred to between these parties, the Supreme Court of Indiana use the following language:

"In the case of the city of Aurora, a special authority was given to her by the section of the charter above quoted, to take stock in a railroad running to the city, upon a vote of a majority of her qualified voters. The power of the city, then, to take railroad stock, etc., was granted subject *to two conditions precedent*, viz: *the existence of a road running to the city, and a vote expressed, etc., of a majority of her qualified voters.* The bonds in suit have a reference upon their face to the authority under which they were issued, and thus put all persons on inquiry as to the extent of the powers of the agent issuing them." *City of Aurora* v. *West*, 22 Ind. 96.

See printed record, p. 198.

See, also, quotation from *Wallace* v. *Mayor of San Jose*, 29 Cal. 188, p. 79 of this brief.

In *Branham* v. *Mayor of San Jose*, 24 Cal. 604, the Court say:

"Parties dealing with the authorities of a municipal corporation are chargeable with full knowledge of their powers, and act at their peril. If the authorities transcend their powers, the act is a nullity, by which the municipality are as much unaffected as if it were the act of a stranger, and it can not be transformed into a validity except by the will of the sovereign. In all such cases, there is involved only a question of power,

which lies at the foundation; and if that fails, the superstructure must fall with it."

And in the case of the *Mayor of Baltimore* v. *Eschback*, 18 Md. 282, will be found some judicious and well-grounded remarks in reference to the dealings of parties with such agents.

The Court say:

"The fact, that the contract made, related to a subject within the general scope of his powers, does not make it obligatory on the appellants, if there was a want of the specific power to make it. *Although a private agent, acting in violation of specific instructions, yet within the scope of a general authority, may bind his principal, the rule, as to the effect of the like act of a public agent, is otherwise.* The city commissioner, upon whose determination to grade and pave, the contract was made, was the public agent of a municipal corporation, clothed with duties and powers, specially defined and limited, by ordinances bearing the character and force of public laws, ignorance of which can be presumed in favor of no one dealing with him on matters thus conditionally within his official discretion. *For this reason, the law makes a distinction between the effects of an act of an officer of a corporation, and those of an agent for a principal in common cases;* in the latter, the extent of authority is necessarily known only to the principal and the agent, while in the former, it is a matter of record in the books of the corporation, or of public law. A municipal corporation can not be held liable for the unauthorized acts of its agents, although done *officii colore*, without some corporate acts of ratification or adoption; and, from considerations of public policy, it seems more reasonable that an individual should occasionally suffer from the mistakes of public agents or officers, than to adopt a rule, which, through improper combinations and collusion, might be turned to the detriment and injury of the public."

Similar considerations, presenting the distinction between moneyed and business corporations and municipal corporations, in reference to this subject, are well presented in the case before quoted from, by the Supreme Court of Illinois.

The Court say:

"Political corporations, in their organizations and purposes, are essentially different from private corporations. The former

are created to aid in the government of the people, the latter to promote trade, manufactures, and a variety of other interests. They are usually endowed with all the powers and rights of an individual so far as they can be conferred. And the power to contract debts, and to issue evidences of the same, is an incident usually attending their creation. When authorized to perform an act, unless restrained by their charter, they may employ the means and perform the act in the same manner that might be done by a private individual. This is necessarily so, to effectuate the purpose of their foundation with most private corporations.

"Municipal corporations, however, being created for purposes of government, and authorized as it were to exercise to a limited extent a portion of the power of the State government, have always been held to act strictly within their charters. It is to them their fundamental law, and their power is only co-extensive with the power granted. Not being essential to the purposes and object of their creation, without an express grant of power for the purpose, they have no authority to contract debts, binding upon the body or individuals residing within their limits. Such a power being unusual when they are created, and usually being conferred, if at all, by special enactment, and all persons being familiar with the fact, it is but natural that those who deal with them or in their obligations, should see to it that the body possesses the power to bind itself for their payment. On the other hand, the object of private corporations usually renders it necessary that they should transact such business as may involve the necessity of incurring debts.

"Another broad distinction exists between the two classes of corporations. The business and proceedings of a private corporation are not public, whilst those of municipal corporations are open to the examination of the public. All of their proceedings are enrolled and become a matter of public record, open to the inspection of all persons. On the other hand, the journal of the proceedings of a private corporation is not accessible to the public, or to any one but the members of the body. It then follows, that persons dealing with municipal corporations have the right to examine and see whether all the steps required by their charter have been taken. It is otherwise with private corporations. Those dealing with them can only examine their charter; and if it is found that the body had, under any circumstances, power to create the indebtedness, the holder will be protected, unless it appears that he was informed

that it was in violation of their charter. But with municipal bodies, whose records are open to examination of all, there is not the same reason to protect a holder, as he may fully inform himself whether their action is warranted." 38 Ill., n. pp. 49, 50.

In the case of *Clark* v. *The City of Des Moines*, 19 Iowa, 214, the Court used the following language:

"It is further involved in the view of the District Court, that an innocent holder of one of these warrants may recover thereon, though it be issued without consideration or without authority. The unsoundness of this view we have already pointed out. The warrants púrport to be issued by the agents of the city. The plaintiff, in taking these warrants, was bound, at his peril, to ascertain the nature and extent of the power of these officers and of the city corporation."

* * * * * * * * *

"Now, without entering into those interesting discussions respecting the liabilities of principals *in certain cases*, for the acts of agents *apparently*, but not *really*, within the scope of their commission, we need only observe that if it be conceded that the mayor and recorder had the *apparent* power to issue warrants like the ones in suit, still, if they did not *really* have this authority, their representations that they possessed it would not be the representations of a fact which from its nature (as in the case of the teller, who certified the checks), rested *peculiarly* within the knowledge of the agent. On the contrary, the charter and the journals of the corporation, open to public inspection, afford to every person the certain means of ascertaining the existence of the authority of these officers to issue the warrants." P. 216.

* * * * * * * * *

"Experienced jurists, conscious of difficulty and danger attending it, hesitate to lay down general and unqualified rules, professing to embrace all cases. Attempts of this character generally prove unsuccessful. With due deference, the language above quoted is susceptible of being taken to assert a doctrine, which, without reasonable limitations, can not be true as respects public and municipal corporations. Suppose a city charter expressly authorized the common council to issue negotiable securities for corporate debts, and that the mayor and recorder, without an order of the council, fabricate—

manufacture such securities, and that they find their way into the hands of innocent purchasers.

"It can not be that JUDGE SWAYNE means that 'the *bona fide* holder has a right to presume that they were issued under the circumstances which gave the requisite authority,' and yet he says so.

"The true rule is, that the want of corporate power, or the want of authority in the municipal officers, can not be supplied by their unauthorized acts or representations. (*Gould* v. *Town of Sterling*, *supra*; *Treadwell* v. *Commissioners*, 11 Ohio, 183, commenting on and criticising *Knox Co.* v. *Aspinwall*, 21 How. 539.)

"Any other doctrine nullifies the limitations and checks contained in the charter for the protection of the corporators, and needlessly invests the public officers and agents with the power successfully to '*Schuylerize*' our public corporations, without limit and without remedy." Pp. 217, 218.

THE SUPREME COURT OF INDIANA HAS DECIDED THAT THIS REPLICATION IS NO ESTOPPEL.

First. The Court will find upon examining the record of the case (reported in 22 Ind. 96), and which is all in this record (pp. 70 to 199), that this same recital of the vote of the people, and the authority of John D. Haynes to subscribe the stock precisely as it is set out in this replication, was set up in that case. The Court will find so much of the record as is necessary to understand this point, in the Appendix, pp. 35 to 45.

In that case, it was set out by the defendants as the authority under which the mayor acted in subscribing the stock.

The complaint was a substantial copy of that in the case in the Dearborn Circuit Court, pleaded as an estoppel. The defendants averred the location of the road on the 6th of July, 1852. This resolution of the city council as to the vote of the people, and the authority of the mayor to subscribe

the stock, was pleaded generally under the Code of Indiana, and filed with the pleadings in the sixth defense.

See Appendix, p. 40.

This resolution will be found on page 177 of the printed record.

The reply thereto by the plaintiff, averred the subsequent building of the road to Aurora, before the commencement of the suit.

See Appendix, p. 43.

The same point was therefore directly before the Court in that case, which is now presented in this tenth replication, and it was not regarded as conclusive against these defendants. The Court, on the other hand, decide the contrary.

See printed record, p. 198.

After setting out the conditions precedent required before the city could subscribe for stock, and issue the bonds found on p. 81 of this brief, the Court proceed:

"Was the stock taken after a vote as prescribed by the charter? A determination of the city council that such a vote had been taken would probably be sufficient evidence of that fact, at least, to constitute a *prima facie bona fide* purchaser in a given case. *The Evansville, etc., Railroad Company* v. *The City of Evansville*, 15 Ind. 395. In this case, however, it may be questioned whether the city council ever passed upon the point. A majority of those voting may not be a majority of the voters; but we pass this point, and proceed to the other inquiry above propounded, viz: was the *Ohio, etc., Railroad* a road running to *Aurora?* How is this inquiry to be determined? If *Aurora* had been made a point in the charter of the company, that fact would have been an answer to the question; but it was not. Hence, it could only have been made a road running to *Aurora* by subsequent action of the directors of the corporation; and, till such action had been had, no absolute subscription of stock in the corporation could have been made by the city." 22 Ind. 97.

See printed record, p. 197.

The above refers to this very resolution set out in the 10th replication, and the Court say that "a majority of those voting may not be a majority of the votes;" that is, they may or may not be. In other words, this finding is not the equivalent of the requirements of the eighteenth section of the charter, and could not be acted upon as such.

In the case referred to above from 15 Ind. 411, the council of the city of Evansville were to subscribe for the stock upon the petition of two-thirds of the residents of the city made to them. The petition was made, and the city council passed upon it, and found that "more than two-thirds, and about five-sixths of the residents of the city of Evansville, and freeholders of the said city," had so petitioned. The petition was made directly to them; whereas, the vote of the city of Aurora, at a general election, is ascertained by the poll-books kept by the inspectors and judges of the election, who are to determine the result of the election. The poll-books and tally-sheets are to be filed with the clerk of the city, with the papers of his office. See sections 26, 27, and 28.

As this very recital of the vote, and authority of John D. Haynes to subscribe the stock, was presented to that Court, substantially the same question was raised as is now presented in this case, and it was not deemed an estoppel to this defense.

Second. The case pleaded as *res judicata*, from the Dearborn Circuit Court, was determined in the Supreme Court of Indiana in 1857. The question here discussed upon this plea, was not presented, nor were any of the questions involved in this record. The chief question which was there raised and discussed related to the constitutional power of the legislature to authorize cities to subscribe for stock. 9 Ind. 76 to 86.

The question of the vote of the people, the want of consideration for the bonds, and the time of actual location of the

road, the manner in which the Ohio and Mississippi Railroad Company obtained possession of the bonds, were not decided or involved. The Court assume that the *determination* to locate the road to Aurora, may be presumed to have been prior to the subscription of the stock, as the time of such determination did not appear.

In this case, the pleas to which this replication purports to be an answer, each of them avers that this determination was after the subscription and the issue of the bonds, so that in that case the same question did not arise as in this case.

The case, however, in 22 Ind. (No. 61 of the docket at this term), in many of its features, presents the questions which are raised in this case.

That case may also be regarded in some respects as a reversal of the case in 9 Ind. 86. This last-named case is the one pleaded in this suit by West and Torrence.

The opinion is a part of the record of the case in Indiana, and the case in 22 Ind. stands unreversed between these parties; and if the said judgment in the case reported in 9 Ind. could otherwise be pleaded as an estoppel, it being wholly raised on demurrer, the decision in 22 Ind. would release the parties from its operation; for one estoppel against another opens up the whole matter and sets it at large.

The case in 9 Ind. was not pleaded as *res judicata* in the case No. 61, or thought of in that light, until the Supreme Court of Indiana had reversed that decision, and then for the first time we hear of the questions of estoppel. Counsel did not seem to think there was any ground for such a replication, until they found that they were likely to be defeated upon the merits; and whatever right they might have had to set up the estoppel at one time, they can not insist upon it now.

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The judgment pleaded was obtained upon a demurrer, and the Court, assuming a fact which did not exist, determined that demurrer in favor of West and Torrence. If West and Torrence wished to hold the courts of Indiana to the law thus declared, and prevent a reversal of it, it was their duty to have pleaded it as an estoppel in the second suit. They did not do so—probably for the reason that they had no faith in it. As the Supreme Court of Indiana, between the same parties, have reversed that decision, and as this is the last decision of the Court, it stands as the law of the State. At any rate, as the case now before the Court presents substantially the questions thus passed upon between the parties, and as that judgment stands, it will relieve this Court from any difficulty as to the questions of estoppel.

The power of the council and the city officers to bind the city by these bonds, depends upon the local acts of Indiana, and this judgment of the court of last resort of that State upon those acts, should be conclusive upon this Court, upon well-established principles. The effect of the resolution of the council, and the authority to subscribe the stock, was directly before the Court in the case referred to. The Court did not hold these facts an estoppel, and could not have rendered the judgment they did, except upon the idea that they were not.

Whether the Court shall regard this last judgment as a technical estoppel, or not, they will at least regard it as the last determination of the Supreme Court of Indiana upon questions of local law, decisive of the case; and in accordance with the practice of the Court long established, follow it—at least, not disregard it.

Nichols *v.* Levy, 5 Wall. 444.
Leffingwell *v.* Warren, 2 Black. 603.
United States *v.* Morrison, 4 Pet. 137.
Green *v.* Lessee of Neal, 6 Pet. 301.

The record of this second trial in the Dearborn Circuit Court, and in the Supreme Court of Indiana, was pleaded as a rejoinder to the plaintiffs' replication.

There was no trial had upon these rejoinders, or any trial upon the merits at all. The plaintiffs demurred to these rejoinders. These demurrers reached back through the whole record, and therefore if the plaintiffs' replications were not a good answer to the pleas, the demurrers reached that question. There being no general trial, the whole question passing off upon demurrer, nothing is waived by the rejoinder, and the questions therefore which the demurrers to these replications presented, are before the Court for their determination.

Third. There is no reason in this case for any anxiety for West and Torrence. The pleadings do not show them to be *bona fide* purchasers for value entitled to any such protection; they show the contrary. The case, as it stands, on the pleadings, presents the city of Aurora as the party likely to suffer. The city never delivered the bonds, or intended to do so. They never received one farthing for them, nor did the city ever receive the stock even.

Her citizens have never obtained any benefit from the railroad. Being in the immediate vicinity of Cincinnati, it has destroyed their then growing trade. West and Torrence not only took the bonds with full notice of the defect of title of the city, but are in other respects complicated with the injury and loss which befell the railroad company, and it would be inconsistent with well-established principles to permit them under such circumstances to recover against the city of Aurora upon these bonds.

VII.

THE SUBMISSION FOR ASSESSMENT OF DAMAGES.

As has been stated, there was no general trial—the demurrers to the pleadings having settled the case upon the first count of the declaration for the plaintiff, the cause was submitted simply for assessment of damages. The only evidence in the case was one of the bonds and the coupons, and the admission that the bonds were signed by Solomon P. Tumy as mayor, and Will. W. Conway as clerk, and were sealed with the seal of the city, and that the coupons were signed by said Conway as clerk. This was all the evidence. There was nothing showing that these were the original or proper officers to sign the bonds, nor was there any evidence of the law of New York as to the rate of interest. The Court, upon this evidence, found that the plaintiffs were entitled to interest.

In this we claim that there was error.

THE PLAINTIFFS NOT ENTITLED TO INTEREST ON THE COUPONS.

There is no promise of interest in these coupons, and no proof that, by the law of New York, interest upon such paper is allowed. There was no allegation upon the subject. These coupons are incidental to the principal contract—they follow it. Being for interest themselves, if interest be allowed upon them, then compound interest is allowed.

We deny that any interest was due upon these coupons. They are not, and do not purport to be separate and distinct contracts. They purport upon their face to be interest warrants, attached to a bond, which is the principal contract. Though in form a promise to pay, yet they are not executed as separate contracts; but each one purports to be an interest warrant to the bond which is specified in the coupon itself.

They are put in this form, not as separate contracts, but for convenience in collecting the interest.

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Comparet *v.* Evans, 8 Blatchf. R. 328.
Niles *v.* Commissioners, 8 Blatchf. 160.
Tillcotson *v.* Preston, 3 Johns. 229.
Williams *v.* Hantankey, 3 Cow. 87.
Dixon *v.* Parkes, 1 Esp. 110, 111.
Ex Parte Bevan, 9 Ves. 224.

This is the law both of Indiana and New York. The law of England is the same, and the law of many of the States is also to the same effect.

Being the interest due from time to time upon the corresponding bonds, and incidental to the original contract, made in this form to be detached for the convenience of the holder in collecting the interest in a distant city, there can be no interest upon them.

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Being interest warrants, it is doubtful, to say the least of it, whether in Indiana, any recovery could be had upon them by any one not also holding the corresponding bond. 3 Black 328

Whether a recovery could be had upon them by a party not holding the corresponding bond is one question. It is a very different question whether interest is due upon them, as they give notice upon their face that they are themselves the interest upon another contract, and interest upon them would be interest on interest, which would be illegal.

Comparet *v.* Evans, 8 Blatchf. R. 328.
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Niles *v.* Commissioners, 8 Blatchf. 160.
Grimes *v.* Blake, 16 Ind. 162.
Boyer *v.* Pack, 2 Denio, 108.
Toll *v.* Hiller, 11 Paige, 231.
Foreman *v.* Foreman, 17 How. Pr. 257.
Ex Parte Bevan, 9 Ves. 223.

In *Grimes* v. *Blake*, 16 Ind. 162, the Court say:

"A failure to pay interest annually, even if it could have been demanded before the notes fell due, which we need not decide, did not authorize a compounding unless an agreement had been made to pay interest on the interest, *after the same became due.*"

To the same effect is *Niles* v. *Commissioners*, 8 Blatchf. 160.

The law on the subject is thus stated by the CHANCELLOR in *Toll* v. *Hiller*, 11 Paige, 231:

"It may be proper to say, however, that as interest was, by the condition of the bond and mortgage, to be paid annually, it would be perfectly equitable to receive interest on such interest from the time it was payable; although for special reasons of policy, courts will not allow interest upon interest, unless there is a special agreement to pay interest thereon, *after the original interest has become due and payable.*"

To the same effect is *Foreman* v. *Foreman*, 17 How. Pr. 257.

Indeed, under the law of New York, in which State these coupons and bonds were payable, a person having paid compound interest under an idea of both parties that the interest was properly calculated, may be permitted to recover it back.

It was so held in 1844 by the Supreme Court of New York in the case of *Boyer* v. *Pack*, 2 Denio, 108.

Interest upon such coupons, or upon the annual interest falling due, can not be contracted for even at the time the original contract is made. It is against the policy of the law to permit it.

Niles *v.* The Commissioners, 8 Blatchf. 160.
Mowry *v.* Bishop, 5 Paige, 102.
Van Beuschooten *v.* Lawson, 6 Johns. Ch. 313, 314.
Toll *v.* Hiller, 11 Paige, 231.
Foreman *v.* Foreman, 17 How. Pr. 257.
Grimes *v.* Blake, 16 Ind. 162.

It requires an agreement made in writing, *after* the interest becomes due, to make it legal. *See cases last cited.*

The bonds in question were made in Indiana, but the coupons are payable in New York. It is, perhaps, immaterial which law governs in reference to this question, as the laws of both States are the same, and neither of them permits compound interest, or interest upon interest, unless upon an express promise to pay it after the interest falls due. There was no proof of anything of the kind, and the Court therefore erred in allowing interest.

VIII.

CONCLUSION.

We have thus, at very considerable length, presented the questions involved in this record; and we think we have shown both upon principle and authority, that the Court below erred in reference to the questions of estoppel presented by the plaintiffs' replications: that this case differs in several important particulars from the case in the Dearborn Circuit Court, pleaded as an estoppel, and from that in the Circuit Court of the United States for the District of Indiana, and, therefore, the judgments pleaded are not *res judicata.*

First. In neither of these cases was the *bona fides* of the possession of the bonds by West and Torrence put in issue and determined.

Second. In neither did it appear that the city of Aurora never delivered the bonds, and that West and Torrence knew this fact when they obtained possession of the same.

Third. In neither of these cases did it appear that the bonds had never been sold in accordance with the eighteenth section of the city charter, and that West and Torrence knew this fact when they obtained the same.

Fourth. In neither of these suits was it put in issue that a majority of the qualified voters of the city had not required the subscription of stock in accordance with the eighteenth section of the city charter, and that West and Torrence had notice of this fact.

Fifth. Nor did it appear, in either of these suits, that at the time of the subscription to the stock of the railroad bonds, there was no location of the Ohio and Mississippi Railroad Company to Aurora, and therefore, no road to that city when the bonds were issued—and that West and Torrence had notice of this fact when they obtained the bonds.

Sixth. Much less did it appear in either of the suits, that West and Torrence were complicated with, and largely responsible for, the ruin that befell the railroad company, and entirely destroyed the stock.

It is clear, therefore, that neither of the suits pleaded presented the same question for adjudication, and that they can not, therefore, be regarded as *res adjudicata* of the questions now in issue.

And as the authority of the city council to act in the premises was not put in issue in said suits, or either of them, it must be equally clear that the certificate on the bond that it was issued in pursuance of the eighteenth section of the city charter, can not be regarded as an estoppel in favor of West and Torrence.

And as it is not pretended that they ever saw the resolution of the city council authorizing John D. Haynes to subscribe for the stock, or were in any way influenced by it, and inasmuch as that resolution does not profess to find that a majority of the qualified voters had required the subscription, or anything equivalent thereto, it is equally clear that this presents no element of estoppel against the city of Aurora in favor of the plaintiffs.

The case stands entirely outside of any of the many ~~of the~~ decisions of this Court upon the subject of these municipal bonds. We have carefully examined all these cases, and we find none of them that will sustain the judgment of the Court below; much less have we been able to find a case from any State court, but many cases in direct opposition to this judgment.

The case of *Tash, et als* v. *Adams*, 10 Cush. 252, is not like this, for that was simply the refusal of the Court to exercise its extraordinary and discretionary powers, by way of injunction, upon the ground of laches of the party asking it—a course ordinarily pursued in such cases.

> Goshen Township *v.* Shoemaker, 12 Ohio St. R. 627.
> Hilton *v.* Earl of Granville, 1 Cr. & Ph. 292.

Thus, in the case of *Goshen Township* v. *Shoemaker*, the Court say:

"An application for relief of this kind will also be affected by laches and acquiescence. Such acquiescence, while it may confer no right on the other party, will preclude the plaintiff from relief in a court of equity."

Nor is the case of the *Savings Bank* v. *The City of New London* such a case, for that case turned upon questions not affecting the power of the city officers to act at the time. And in that case, there was certain evidence provided for by law, and filed with the Secretary of State, and upon which

the public had a right to rely. That case, as did *Tarquand* v. *The Royal British Bank*, and many of the cases decided in this Court, finally turned upon some minor irregularity of the officers in the execution of the power they had at the time, and which did not affect its vitality.

In some of the cases, the question was whether the law which authorized the issue of the bonds was constitutional or not. None of them determined that if the law was void, the bonds were valid in the hands of *bona fide* purchasers.

In others, the question raised was whether the change in the views of the Supreme Court of the State as to the validity of its laws, should be followed by the Circuit Court of the United States, so as to hold bonds void which were negotiated at a time when the Supreme Court of the State had held these laws valid.

In others, whether the bonds had not been ratified under laws authorizing such ratification.

In many of these suits, the distinction set forth in the learned opinion of the Supreme Court of Ohio, in *Treadwell* v. *The Commissioners of Hancock County* (since followed by the Supreme Courts of Wisconsin and Iowa), explains them consistently with the views herein maintained.

In the case of *Havemeyer* v. *Iowa County*, 3 Wall. 295, this Court expressly refused to hold that city officers, who were not authorized to act at the time they issued the bonds, could, by anything they should say or do, give validity to the bonds or estop the city from questioning their validity in the hands of *bona fide* purchasers. And in the case of the *Supervisors* v. *Schenck*, decided at the last term, the learned Judge says that ratification is inoperative, if the party attempted to be charged was not competent to make the contract when the same was made. And it follows that if the city council was

not thus authorized to act, they could not without some new legislative authority ratify their acts, or do any act that would estop the city from denying their authority.

We know that there are some remarks to be found in two or three of these cases, which, considered apart from the facts of the cases, would lead to principles inconsistent with those contended for in this brief.

If it is intended by anything that this Court has ever decided, that municipal corporations in this country have, *prima facie*, power to issue negotiable paper, and that parties taking it are not bound to inquire into its origin, and the power of the officers to issue it; or that such officers, having no power to issue this species of paper, or to act upon it, except upon certain contingencies, may nevertheless act without regard to the happening of such contingencies, and bind the corporation; or that, having no power for the want of the happening of such contingencies, they can, without express statutory authority therefor, bind their principals by any certificate they may give, and estop them from showing the want of authority to issue the paper at the time it was issued; or that such officers (without special legislative authority) can ratify or confirm any such unauthorized act; we say, if anything that the Court has determined has gone thus far, it never has received the assent of the judicial mind of the country, and, in our humble judgment, it never will.

Indeed, it stands opposed to the deliberate decisions of the State courts of New York, Maryland, Alabama, California, Ohio, Illinois, Wisconsin, and Iowa, without the judgment of a solitary State court, so far as we can find, to sustain it.

But we are satisfied that the Court has never intended to sustain any such principles.

We believe we are not unmindful of the value of the public faith of the country, in regard to this class of securities, or to

the many laudable efforts of this Court to sustain it; but any effort in so doing that places these municipal corporations at the mercy of their officers, or that breaks down the well-settled principles of the law relating to the same, is more likely in the end to produce mischief than good.

It has never at any time or anywhere been determined that he who takes a negotiable promissory note, or bill of exchange, signed by an agent, is not bound, at his peril, to inquire into, and learn, the powers of that agent, aside from his declarations or statements, or from anything he may certify about his powers upon the note or bill. And if that be so as to private agents, how much more should it apply to the acts of city officers, whose powers are defined by law, and whose acts appear upon the public records, and over whom there can be no constant supervision?

It is quite evident that if such officers can issue negotiable paper, and bind these municipal bodies by the same, in the hands of *bona fide* purchasers, without regard to the origin of such bonds; if such purchasers are only bound to inquire whether these corporations have power under any circumstances to issue such bonds, and finding that they have, may presume that their issue is legal, it is evident that these officers may obtain power simply by its assumption, and may be greatly tempted, and such corporations be in great peril. Is there anywhere to be found in the books law to sustain such a position? Is it not on the contrary in direct opposition to the general drift of the authorities upon the subject?

All of which is respectfully submitted.

T. D. LINCOLN,
WM. S. HOLMAN,
Of Counsel for the Plaintiff in Error.

NOTE.

I have seen the Brief of Mr Mitchell since mine was written, and in answer to the position taken therein, that the demurrer to the replication is wavied by the rejoinders, and that upon the plaintiffs demurrer thereto, the question as to the replication is not reached, I refer to the following cases.

Spiy *vs.* the Bank of Mount Pleasant, 10 Pets. 264.
Dickson *vs.* Wilkinson, 3 How. 61.
Stephens on Pl. 144.
Tubbs *vs.* Caswell 8 Wend 131.

A demurrer to an unsufficent pleading is waived by pleading over only where court haslost control over that part of the record. Dickson *vs.* Wilkinson 3 How. 61.

Or where a trial has been had upon such plea, and the case has drifted away from the demurrer and been determined upon other questions that he abandoned.

It does not hold in a case like this, where the whole record is before the court and it is called to pass upon it. There it is the duty of the Court to look through the whole record and render judgment for the party entitled thereto.

Stephens on Pl. 144.

I also refer to the following cases upon the question of Estoppel.

Gouchy *vs.* Claxton 34 Law Jour. R. 239, 240.
Newall *vs.* Elliott 1. Herl. and Colt. 797.
Schvoeppel *vs.* Corning 5 Deuio, 253
Hobb *vs.* Henning 17 C. B. N. S. 826.
Philips *vs.* Ward 2 Hurls and Colt, 720.
Wilson *vs.* Couch 15 C. B. N. S. 97
Blackman, Case 1 Salk. 290, 291.
Richardson *vs.* Boston 19 How. 267, 268.

I.

I. Declaration in the Suit now being Considered.
II. Pleas in the same Suit.
III. Replications in the same Suit.
IV. Special Causes of Demurrer.
V. Submission for Assessment of Damages.
VI. Bill of Exceptions.

II.

VII. Petition in the Case in the Dearborn Circuit Court.
VIII. Demurrer to said Complaint.
IX. Answer in the same Suit.
X. Demurrer to the First Paragraph.
XI. Reply to the Second Paragraph.

III.

XII. Declaration in the Case in the Circuit Court of the United States.
XIII. Demurrer to the Same.

IV.

XIV. Second Suit in the Dearborn Circuit Court.
XV. Answers to the Same.
XVI. Demurrers to the Second, Third, Fourth, and Sixth Answers.
XVII. Reply to Fifth Answer.
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XIX. Rejoinder of Defendants.

APPENDIX.

I.

DECLARATION IN THE SUIT NOW BEING CONSIDERED

In the United States Circuit Court, Indiana District, May Term, 1864.

DISTRICT OF INDIANA, *ss:*

Charles W. West and Joseph Torrence, citizens of the State of Ohio, complain of the city of Aurora, a corporation created and existing in the State of Indiana by virtue of the laws thereof, of a plea of trespass on the case on promises: for that the said defendant, by virtue of an act of the General Assembly of the State of Indiana, entitled "An act granting the citizens of the town of Aurora, in the county of Dearborn, a city charter," approved February 14, 1848, did, on the first day of January, 1852, in said district, execute and issue, in due form, under the seal of said corporation and the signature of the mayor and clerk thereof, fifty bonds of that date, each payable to the Ohio and Mississippi Railroad Company, or bearer, at the North River Bank, in the city of New York, twenty-five years after date, in the sum of $1,000 each, on presentation and delivery thereof at said bank, with six per cent. interest thereon, payable annually on the 1st day of January, at said bank, on presentation and delivery of the proper coupons to each of said bonds attached; which bonds were and are respectively numbered from one to fifty, inclusive, and to each of which, when so executed and delivered, were attached twenty-five interest coupons, under the signature of the clerk of said city, Will. W. Conway; and the plaintiffs say that by each of fifty of said coupons, attached to said fifty bonds, respectively, the defendant promised to pay the bearer at said bank, on the 1st day of January, 1862, sixty dollars, making together $3,000; and by each of fifty other of said coupons attached to said fifty bonds, respectively, the defendant promised to pay the bearer at said bank, the

further sum of sixty dollars on the 1st day of January, 1863, making together the further sum of $3,000; and by each of fifty other of said coupons to said fifty bonds respectively attached, the defendant promised to pay the bearer at said bank the further sum of sixty dollars on the 1st day of January, 1864, making together the further sum of $3,000, and being in all the sum of $9,000: and which one hundred and fifty coupons are all of the following tenor and effect (with the exception that each is numbered differently, bearing the same number of the bond to which it belongs, and that fifty of them are payable Jan. 1, 1862, fifty payable Jan. 1, 1863, and fifty payable Jan. 1, 1864), to wit:

"Ohio and Mississippi Railroad subscription, $50,000.

"The city of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1862, being annual interest on bond No. 1.

"$60. WILL. W. CONWAY, *Clerk.*"

And the plaintiffs say that heretofore, to wit: on the 1st day of January, 1862, for valuable consideration and in good faith, they became the owners and bearers of all said bonds and of all the coupons thereto attached as aforesaid, and have ever since been, and now are, such owners and bearers, and that the defendant has never paid said one hundred and fifty coupons, nor said $9,000 so due thereon, nor any part thereof.

2. And the plaintiffs, further complaining, say that at said district, on the 1st day of January, 1864, the defendant, being indebted to the plaintiffs in the further sum of $9,000 for goods, wares, and merchandise before that time by the plaintiff sold and delivered to the defendants at her request, and in the further sum of $9,000 for so much money before that time by the defendant had and received to the use of the plaintiff, and in the further sum of $9,000 lent and advanced by the plaintiffs to the defendant at her request, then and there undertook and promised the plaintiffs, in consideration thereof, to pay them the same sums on demand.

Yet, though often requested, the defendant has never paid to the plaintiffs the several sums in the first and second counts of this declaration mentioned, or either of them, or any part thereof, to the damage of the plaintiffs twelve thousand dollars. And therefore they sue, etc.

McDONALD & PORTER,

—*Record*, pp. 1, 2, 3. *Plaintiffs' Attorneys.*

PLEAS IN THE SAME SUIT.

United States of America, Circuit Court of the United States for the District of Indiana, May Term, 1864.

THE CITY OF AURORA
ads.
CHARLES W. WEST AND JOSEPH TORRENCE, partners, etc.

[1st plea withdrawn from the record.]

2. And for a further plea in this behalf as to the first count of the plaintiffs' declaration, the said defendant, by her attorneys aforesaid, says (*actio non*), because, she says, that the said coupons in said first count mentioned and said bonds to which said coupons were attached, were made and issued by the city council of the city of Aurora, and they passed into the possession of the Ohio and Mississippi Railroad Company without any good or valuable consideration: of which the said plaintiffs, at the time they became the holders of said bonds and coupons in said first count mentioned, had notice. And this the defendant is ready to verify. Wherefore, he prays judgment, etc.

3. And for further and third plea in this behalf as to the said first count the defendant, by her attorneys aforesaid, says (*actio non*), because, she says, that the said coupons mentioned in said count and the bonds mentioned in said count to which said coupons were attached, were made and issued by the common council of the city of Aurora, and the Ohio and Mississippi Railroad Company obtained possession thereof and held them in part payment of a subscription of fifty thousand ($50,000) dollars made by order of said council to the capital stock of said Ohio and Mississippi Railroad Company, on the 28th day of September, 1850; and defendant says that on the day of , 1848, the General Assembly of the State of Indiana passed an act entitled "An act to incorporate the Ohio and Mississippi Railroad Company," which act took effect on the 14th day of February, 1848, and by the 13th section

of which act the president and directors of said company are invested with full power to survey, locate, construct, and repair a railroad on the most direct and practicable route between Lawrenceburg, on the Ohio River, and Vincennes, on the Wabash River, and to extend the same eastwardly to Cincinnati, in the State of Ohio, and westwardly, through the State of Illinois, to the city of St. Louis, in the State of Missouri. And defendant further says that the defendant, the city of Aurora, is a municipal corporation, and was chartered as such by an act of the General Assembly of the State of Indiana, entitled "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter," approved February 14, 1848, and that, by virtue of said charter, the city council of said city, whenever a majority of the qualified voters of said city required it, were authorized and empowered to take stock in any chartered company for making roads to said city, and to raise funds for the payment of said stock; the city council were authorized and empowered to make and sell their bonds issued under the seal of said corporation, with coupons attached thereto; and she says that said city council of said city of Aurora is invested with no power or authority whatever to take stock in any company that was not a chartered company, for making a road to said city, nor to issue her bonds to raise money to pay for any such stock. And defendant says that the said Ohio and Mississippi Railroad Company was not, on said 28th of September, 1850, nor at any time previous thereto, a chartered company for making a road to said city of Aurora, or for doing any act or thing for the benefit of said city or for the promotion of the local interests thereof; and that, on the 28th day of September, 1850, when said subscription was made by said city council for fifty thousand ($50,000) dollars of the capital stock in said Ohio and Mississippi Railroad Company, the road of said company, that is to say, the Ohio and Mississippi Railroad, was not located to or through said city of Aurora; nor had said company, on or before said 28th day of September, 1850, decided upon nor determined the route of said road, nor whether said road should be in, to, or through said city of Aurora; nor was said company then constructing, nor had they at any time previous to said day been engaged in constructing, their said road in, to, or through said city of Aurora, nor had said company in any way determined or decided that said road should be constructed to, through, or in said city of Aurora, and that the

plaintiffs, at the time they became the holders and bearers of said bonds and coupons, had notice of all the foregoing facts. Wherefore, defendant says that said subscription for stock in said railroad as aforesaid, and the above bonds and coupons issued as aforesaid, are null and void, and this she is ready to verify. Wherefore, she prays judgment, etc.

4. And for further plea in this behalf as to said first count in said declaration, the defendant, by her attorneys as aforesaid, come and defend the wrong and injury when, etc., and says (*actio non*), because, she says, that said bonds and coupons in said first count mentioned were made and issued by the city council of the city of Aurora, and the Ohio and Mississippi Railroad Company obtained them and held them in part payment of a subscription made by said city council on behalf of the city of Aurora, on the 28th day of September, 1850, for fifty thousand ($50,000) dollars of the capital stock of said company, to wit: 1,000 shares of stock in said company. And the defendant further says that the said city of Aurora was, at the time of making the subscription aforesaid, and at the time of making and issuing said bonds and coupons, and at the time when said railroad company obtained possession of them, and still is, a municipal corporation, created by the act of the General Assembly of the State of Indiana approved February 14th, 1848, as stated in the foregoing third plea in this behalf; and that the city council of said city of Aurora, at the time said subscription was made and bonds and coupons issued, or at any time before or since, did not possess any power or authority whatever to subscribe for or take stock in any railroad or other road than that conferred by said act. And defendant says that by said act it is provided, among other things, that the city council of said city, whenever a majority of the qualified voters of said city require it, shall have power, and they are thereby authorized, to take stock in any chartered company for making roads to said city, or for watering or lighting said city, "Provided no such stock shall be subscribed on the part of the city until a majority of the qualified voters thereof have signified their assent thereto, by expressing on their tickets at any annual election, that they are in favor of the subscription for such stock by the city council; and to raise funds for the payment of such stock the city council shall have power to make and sell their bonds under the seal of said corporation, payable in such manner and at such times as they may deem proper and expedient,

bearing interest at the rate of six per cent. per annum, payable annually." And defendant alleges that a majority of the qualified voters of said city of Aurora did not, at an annual election, signify their assent to the making of said subscription by expressing on their tickets that they were in favor of subscribing for such stock by the city council, nor did a majority of the qualified voters of said city require the same to be done, nor did they confer upon the said city council any power or authority whatever to subscribe for said stock and issue said bonds and coupons: of all of which the plaintiffs had notice. Wherefore, defendant says that said subscription was made, and said bonds and coupons issued, without any authority whatever, and are null and void: all of which defendant is ready to verify. Wherefore, defendant prays judgment, etc.

5. And for further plea in this behalf, defendant, by her said attorneys, comes and defends, etc., as to said first count, and says (*actio non*), because, she says, that the bonds and coupons in said first count mentioned were made and issued, and said Ohio and Mississippi Railroad Company obtained possession thereof in manner and for the consideration mentioned and set forth in the foregoing third and fourth pleas of the defendant in this behalf; and defendant says that the said Ohio and Mississippi Railroad Company was and is a company chartered by the General Assembly of the State of Indiana in manner and form, and for the purpose and with the power mentioned in said third and fourth pleas; and defendant says that said city of Aurora is and was on the said 28th of September, 1850, when said subscription for stock was made by order of the city council, and is and was on the 1st day of January, 1852, when said bonds and coupons were issued, and said Ohio and Mississippi Railroad Company obtained them, as aforesaid, a municipal corporation, created by an act of the General Assembly of the State of Indiana, as stated and set forth in said third and fourth pleas of the defendant in this behalf, possessing the power vested in said corporation by said last-mentioned act, and possessing no power whatever to take stock in any company, making a road to the city of Aurora, not chartered for that purpose; and the defendant says that the Ohio and Mississippi Railroad Company was not a company chartered for making a road to said city, and furthermore, that the said Ohio and Mississippi Railroad Company did not decide and determine until the 23d

day of July, 1852, to locate said road to and through the said city of Aurora, and said road was not located to said city until months after the said 23d of July, 1852: of all of which facts the plaintiffs had notice. Wherefore, the defendant says that the said subscription made for said stock by said city council, and the bonds and coupons issued and held as payment thereof by said railroad company, were and are null and void; and this she is ready to verify. Wherefore, she prays judgment, etc.

6. And for further plea in this behalf to the said first count of plaintiffs' declaration, the defendant comes and defends, etc., and says (*actio non*), because, she says, that said Ohio and Mississippi Railroad Company was not a chartered company for making a road or roads to the city of Aurora, and was not, on the 28th of September, 1850, when said subscription for stock, as stated in third and fourth pleas of defendant in this behalf, was made, making and constructing, and had not been at any time before said day engaged in making and constructing, a railroad or any other road to, through, or from said city of Aurora; but said railroad company was, by the 13th section of the act of the General Assembly of the State of Indiana, incorporating it, authorized to survey, locate, and construct a railroad on the most direct and practicable route between Lawrenceburg, on the Ohio River, and Vincennes, on the Wabash River, having in view the interests of the company and the convenience of the citizens of the State of Indiana, with the privilege of extending the same eastwardly to Cincinnati, in the State of Ohio, and westwardly, through the State of Illinois, to St. Louis, in the State of Missouri; that the said company was not authorized to construct, and never has, since the incorporation thereof, been engaged in the construction of any other road than the railroad contemplated by the said 13th section of their said act of incorporation. And defendant avers, that on said 28th of September, 1850, the day on which the city council of said city made the said subscription of $50,000 in and to the capital stock of said railroad company, the said company were not engaged in making or constructing their said railroad in, to, or through the said city of Aurora, nor had said company, at the time of making said subscription by said city council located, nor had they decided or determined to locate, their said railroad to the said city of Aurora, nor had they made any location of said road between Lawrenceburg, on the Ohio River, and Vincennes, on the Wabash River. And defendant

further avers that on the 1st day of January, 1852, the day on which said bonds and coupons were made and issued, and said railroad company obtained possession thereof, the said company were not making, nor had said company, at any time before the 1st day of January, 1852, been engaged in making, their said road to or through the said city of Aurora, nor had said company located, or determined to locate, their said road to or through said city on the 1st day of January, 1852, when said bonds and coupons were made and issued by said city council, or at any time preceding that day. And defendant alleges that said subscription was made for capital stock in said railroad company, and said bonds and coupons were made, and said railroad company obtained possession thereof, and held them in part payment of said subscription and accruing interest thereon, and for no other purpose or consideration whatever: Of all of which the plaintiffs had notice. Wherefore, the defendant says that the said Ohio and Mississippi Railroad Company was not a company chartered for making a road or roads to the city of Aurora, or to do any other act or thing touching the local affairs of said city within the meaning of the act of incorporation of said city, and that said company had not at or before the time when said subscription was made, nor on the said 1st day of January, 1852, when said bonds and coupons were issued as aforesaid, located their said road to or through said city, and were not constructing or making the same to and through said city, and that the said subscriptions of stock, and the said bonds and coupons so held in payment thereof, are wholly null and void. Wherefore, she prays judgment, etc.

7. And for further and seventh plea in this behalf as to the said first count in the said declaration, the defendant, by her attorneys aforesaid, says that the said action ought not to be maintained against her, because, she says, that at the time of making the subscription and at the time of the alleged making said bonds and coupons, the said Ohio and Mississippi Railroad Company was and is a company chartered by the General Assembly of the State of Indiana in manner and form, and for the purpose, and with the powers mentioned in the said third and fourth pleas, and the said city of Aurora was, and still is, a municipal corporation, created by the act of the General Assembly of the State of Indiana, approved February 14th, 1848, as stated in the foregoing third plea in this behalf, and the said city council of said city of Aurora at the time said subscription was made, and said bonds and coupons issued, or at any time before or

since, did not possess any power or authority whatever to subscribe for or to take stock in any railroad or other road, or raise funds for the payment of such stock, or to make, execute, deliver, or otherwise dispose of her bonds and coupons than that conferred by the said act.

The defendant further avers that the said bonds and coupons were made by the said city council of the said city of Aurora, and passed into the possession of the said Ohio and Mississippi Railroad Company, and were held in payment of one thousand shares of the stock of said railroad company of the par value of fifty dollars per share, then and there subscribed by the said city council, by the said city of Aurora as set out in said third plea; that the said stock, at the time the said subscription was made, was of the par value thereof, but that through the gross and reckless mismanagement of the directors and officers of the said railroad company, the said stock, before it was issued for the said city council of the city of Aurora, had become of no value, and was wholly worthless, and there has been a failure of consideration for the said bonds and coupons, and the said railroad company had no right to hold the said bonds and coupons, and that the said stock has thus become worthless before the plaintiffs became the holders thereof. The defendant avers that during all of said time the said West, one of the plaintiffs, and a partner of the other, was a director of the said railroad company, and consented and contributed to the said mismanagement of their affairs, and the said depreciation of its said stock: of all of which, and long prior to the time, when they obtained possession of the said bonds and coupons, the plaintiffs had notice. And the defendant therefore avers that the said bonds and coupons are null and void: all of which the defendant is ready to verify. Wherefore, she prays judgment, etc.

8. And for a further and eighth plea in this behalf as to the first count in the said declaration, the defendant, by her attorneys aforesaid, says that the said action ought not to be maintained against her, because, she says, that at the time of making the said subscription of stock in the third plea above mentioned, and at the time of making the said bonds and coupons, and at the time the said railroad company got possession of them, the said Ohio and Mississippi Railroad Company was, and is, a company chartered by the General Assembly of the State of Indiana in manner and form, and for the purpose and with the powers mentioned in said third and

fourth pleas, and the said city of Aurora was, and still is, a municipal corporation, created by the act of the General Assembly of the State of Indiana approved February 14, 1848, as stated in the foregoing third plea in this behalf, and that the city council of said city of Aurora at the time the said subscription was made and the said bonds and coupons issued, or at any time before or since, did not possess any power or authority whatever to subscribe for or take stock in any railroad or other road, or raise funds for the payment of such stock, or to make, execute, deliver, or otherwise dispose of her bonds and coupons than that conferred by the said act; that by the 18th section of the said act it was provided that whenever the said city council of the said city of Aurora took stock in any chartered company for making roads to said city, the said city council should have power and authority, for the purpose of raising funds for the payment of such stock, to make and sell their bonds of the tenor therein prescribed, and had no other or further power or authority in relation thereto. The defendant avers that the said coupons, and the said bonds to which said coupons were attached in the said first count in the said declaration mentioned, were prepared for the payment of a subscription of stock by the said city council of the city of Aurora to the said Ohio and Mississippi Railroad, as aforesaid, but that the said city council of the said city of Aurora never made and sold the said bonds as required by the terms of the said act, but the same came into the hands and possession of the said Ohio and Mississippi Railroad Company long prior to the issue of any such stock by the said railroad company for the same, without such sale and without any authority whatsoever from the defendant.

The said defendant further avers that said bonds and coupons were never sold by the said city council of Aurora nor by any authority conferred by them, and are null and void; that during all said time the said West, one of the plaintiffs and a partner of the other plaintiff, was a director of the Ohio and Mississippi Railroad Company, and had notice of all of the said facts. And the said plaintiffs had notice of the said facts at the time they got possession of the said bonds and coupons.

All of which the defendant is ready to verify. Wherefore, she prays judgment, etc.

T. D. LINCOLN,
JER. SULLIVAN,
JNO. D. HAYNES,
Attorneys for Defendants.

—*Record*, pp. 5—11.

REPLICATIONS IN THE SAME SUIT.

In the Circuit Court of the United States for the District of Indiana, May Term, 1865.

CHARLES W. WEST AND JOSEPH TORRENCE
vs.
CITY OF AURORA.

1*st rep.*—And the said plaintiffs, as to the said plea by the defendant secondly above pleaded, say that the defendant ought not to be permitted in its said plea to aver that the bonds in the said first count of the plaintiffs' declaration mentioned, and the coupons which were attached thereto, passed into the possession of the Ohio and Mississippi Railroad Company without any good or valuable consideration, of which the plaintiffs, at the time they became the holders and bearers thereof, had notice, because, heretofore, to wit, at the term of May, 1856, of the Circuit Court for the county of Dearborn, in the State of Indiana, the plaintiffs impleaded the said defendant (together with said Ohio and Mississippi Railroad Company, who was made a defendant only as the assignor of said bonds to the plaintiffs), in a certain action for the recovery of the amount of the coupons attached to the same fifty bonds of the defendant, which are mentioned in the declaration in this suit, and which had fallen due on the 1st day of January, 1856, and therein complained against said defendant that on the day of September, 1850, the said city of Aurora, by virtue of the authority vested in her by the act of the General Assembly of the State of Indiana, entitled "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter," approved February 14, 1848, subscribed for and took fifty thousand dollars of the capital stock of said Ohio and Mississippi Railroad Company, a company chartered to construct and then constructing a railroad to said city (a majority of the qualified voters of the said city having first expressed their assent to such subscription by

expressing on their ballots, at an annual election in said city, that they were in favor of such subscription); and that to raise funds for the payment for said stock, the city made, sold, and delivered to said Ohio and Mississippi Railroad Company fifty of the bonds of said city, by each of which the said city acknowledged itself to be indebted to the Ohio and Mississippi Railroad Company, or bearer, in the sum of one thousand dollars, negotiable and payable at the North River Bank, in the city of New York, twenty-five years from the date thereof, upon the presentation and delivery of the proper coupons thereto attached, signed by the clerk of said city, and which bonds, with the coupons so attached to the same, were afterward, on the day of , 1852, sold, transferred, and assigned by the said Ohio and Mississippi Railroad Company to the plaintiffs, who ever since had been the holders and owners thereof, and that the said city of Aurora had failed and refused to pay the said coupons which had fallen due January 1, 1856. And at the same term the said defendant filed an answer to said complainant in two paragraphs, by the first of which the said defendant alleged that the said Ohio and Mississippi Railroad Company was not chartered to construct, and was not on the day of , 1850, at the time when such subscription for $50,000 of the capital stock of said company was made, constructing a railroad to said city of Aurora; but that said company was incorporated by an act of the general assembly, which took effect February 14th, 1848, to construct a railroad on the most direct and feasible route between Lawrenceburg, in the county of Dearborn, and Vincennes, in the county of Knox. And that at the time said subscription was made as aforesaid, the said company had not located their road through the said city of Aurora, and that said subscription was made for capital stock of said company, and said bonds and coupons were issued in payment of said subscription, and accruing interest thereon, and for no other purpose. Wherefore, the said defendant said that the said company was not chartered to construct, and were not at the time of said subscription engaged in constructing, a railroad to the city of Aurora, within the meaning of the 18th section of the charter of said city, and that said subscription and the bonds and coupons issued thereon were therefore unauthorized and void. And by the second of which paragraphs the said defendants alleged that the Ohio and Mississippi Railroad Company was not chartered to construct,

and was not on the day of September, 1850, at the time when said subscription was made, constructing, a railroad to said city of Aurora, and that therefore said subscription and the bonds and coupons issued thereon were unauthorized and void; and thereupon the plaintiffs in said action demurred to the first paragraph of said answer, upon the ground that the same did not state facts sufficient in law to bar the plaintiffs' action; and for reply to the second paragraph of said answer, alleged that the said Ohio and Mississippi Railroad Company, by virtue of its charter, had constructed and finished a railroad from Seymour, in the county of Jackson, to said city of Aurora, and thence to the mouth of the Great Miami River, and was engaged in extending said road to Vincennes, having also finished it from the Miami River to the city of Cincinnati, and that the bonds in the complaint referred to, with the coupons attached, were issued and delivered to the Ohio and Mississippi Railroad Company by the said city of Aurora, after the said railroad had been surveyed and located as, and where the same had since been, finished, and for the purpose in the complaint alleged; to which reply the said defendant demurred, upon the ground that the same did not state facts sufficient in law to maintain the plaintiffs' action. And afterward, at the term aforesaid, the said circuit court did determine said action upon the demurrers aforesaid, and sustained the said demurrer to the first paragraph of the said answer, and overruled the said demurrer to the said plaintiffs' reply, and rendered final judgment in said action, as follows:

And the said city not desiring to controvert the facts stated in said reply, but admitting the same, and that the amount of said bonds and coupons is the sum in the complaint stated, it is therefore considered by the Court that the plaintiffs recover of said city of Aurora the sum of three thousand and ninety-six dollars, being the amount of the several coupons in the complaint mentioned, together with the costs, etc., as by the record of said action, ready to be produced to this Court, will more fully appear. And the plaintiffs aver that said judgment is still in force; that the plaintiffs and the city of Aurora, named as parties in that record, and the same parties as in this suit, and that the said fifty bonds, with coupons attached, in the pleadings in that action mentioned, and the fifty bonds in the present suit mentioned, are the same identical bonds: all of which the plaintiffs are ready to verify. Where-

fore, they pray judgment if the defendant ought to be admitted against the said record to aver that the bonds in the first count of the plaintiffs' declaration mentioned, and the coupons that were attached thereto, passed into possession of the Ohio and Mississippi Railroad Company, without any good and valuable consideration, of which the plaintiffs, at the time they became the holders and bearers thereof, had notice as by said second plea the defendant has averred.

2*d rep.*—And the said plaintiffs as to the said pleas by the said defendant secondly, thirdly, fourthly, fifthly, sixthly, seventhly, and eighthly, above pleaded, say that the defendant ought not to be admitted by its said second plea to aver that the said bonds and coupons in the declaration mentioned passed into the possession of the said Ohio and Mississippi Railroad Company without any good or valuable consideration, of which the plaintiffs, at the time they became the holders of said bonds and coupons, had notice; nor by its said third, fourth, fifth, sixth, seventh, and eighth pleas, to aver that the said bonds and coupons were null and void, as in each of said pleas is alleged; nor that there was a failure of the consideration of said bonds and coupons as in said seventh plea alleged; nor that said bonds and coupons were not sold by the defendant in said railroad company as the charter of said city required, but came into possession of said railroad company without a sale and without any authority from the defendant, of which the plaintiff, when they obtained them, had notice, as in the eighth plea is alleged; because, they say, that heretofore, to wit: at the May Term, 1857, of the Circuit Court of the United States for said District of Indiana, the said plaintiffs impleaded the said defendant in a certain action of assumpsit for the recovery of the amount of coupons which were attached to the same fifty bonds of the defendant, which are mentioned in the declaration in this suit, and which had fallen due on the 1st day of January, 1857, and therein complained by the first count of their declaration against said defendant; that by virtue of the power conferred on it by an act of the General Assembly of the State of Indiana, entitled "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter," approved February 14th, 1848, said defendant did lawfully and in due form, and for a valuable consideration, execute and issue fifty bonds, under the seal of said corporation, and the signature of the mayor and clerk thereof, and bearing

date the 1st day of January, 1852, by each of which bonds the defendant acknowledged herself to be indebted to the Ohio and Mississippi Railroad Company, or bearer, in the sum of one thousand dollars, negotiable and payable at the North River Bank, in the city of New York, twenty-five years from the date thereof, upon the presentation and delivery of said bonds, bearing an interest of six per cent. per annum, payable annually, on the 1st day of January, at said bank, on the presentation and delivery of the proper coupons thereto attached, signed by the clerk of said city; and that the plaintiffs, for a valuable consideration, had become the legal owners and holders of said fifty bonds and coupons thereto attached; and that the defendant had failed to pay the plaintiffs the coupons or annual instalment of interest which had fallen due on the 1st day of January, 1857, as by the said coupons the said defendant had promised. And at the said May term of said court, said defendant filed its demurrer to the first count of said declaration, and therein alleged that the said first count did not state facts sufficient to constitute a cause of action against said defendant, which demurrer the said Court afterward, at the same term, to wit: on the 29th of May, 1857, overruled. And the defendant making no further defense to said action, the said Court thereupon assessed the plaintiffs' damages for the breach of the promises in said first count mentioned, at three thousand and seventy-five dollars. Whereupon, it was considered and adjudged by the said Court that the plaintiffs should recover of the defendant the said sum of three thousand and seventy-five dollars, as also their costs and charges therein expended, as by the record of said action in this Court still remaining will more fully appear. And the plaintiffs aver that said judgment is still in force; that the plaintiffs and the city of Aurora, named as parties in that action, are the same parties as in this suit; and that the said fifty bonds, with the coupons referred to in the said first count of said declaration mentioned, and the fifty bonds with the coupons therein referred to, which are mentioned in the first count of the declaration in this suit, are the same identical bonds. All of which the plaintiffs are ready to verify. Wherefore, they pray judgment if the defendant ought to be admitted against the said record to aver that the said bonds and coupons in the declaration in the suit mentioned passed into the possession of said Ohio and Mississippi Railroad Company without any good or valuable consideration, as in said second plea

alleged; or that the said bonds and coupons were null and void, as in said third, fourth, fifth, sixth, seventh, and eighth pleas is alleged; or that said bonds and coupons were not sold by the defendant to said railroad company as the charter of said city required, but came into the possession of said company without a sale and without any authority from the defendant, of which the plaintiffs, when they had obtained them, had notice, as in the said eighth plea is alleged; or that there was a failure of the consideration of the said bonds and coupons as in the said seventh plea is alleged.

[*Note.*—The 3rd and 4th replications withdrawn.]

5*th rep.*—And the said plaintiffs, as to the said pleas by the defendant, thirdly, fourthly, fifthly, and sixthly, seventhly and eighthly, above pleaded, say that the defendant ought not to be admitted by said third plea to aver that the said Ohio and Mississippi Railroad Company was not, on the 28th of September, 1850, nor at any time previous thereto, a chartered company for making a road to said city of Aurora, or for doing any act or thing for the benefit of said city, or for the promotion of the local interests thereof; and that on the 28th day of September, 1850, when the subscription was made by the council of said city, for $50,000 of the capital stock of said railroad company, it was not located to or through said city of Aurora, and that said company had not, on or before that day, determined the route of said road, nor whether it should be located through said city; and that said company was not then constructing, and had not previously been engaged in constructing, their road to or through said city, and that the plaintiffs, at the time they became the holders and bearers of said bonds and coupons, had notice of said facts; nor by said fourth plea, to aver that a majority of the qualified voters of said city did not, at any annual election, signify their assent to the making of said subscription, by expressing on their tickets that they were in favor thereof, and that a majority of the qualified voters of said city did not require the same to be done, nor confer upon the council any authority to subscribe for said stock, and issue said bonds and coupons, all of which the plaintiffs had notice, as in said fourth plea is averred; nor to aver that the said railroad company was not chartered for making a road to said

city, and that said company did not determine, until the 23d of July, 1852, to locate said road to said city, and that said road was not located to said city until months thereafter, of which facts the plaintiffs had notice, as in said fifth plea the defendant has alleged; nor that the said bonds and coupons are null and void, as the defendant in its sixth, seventh, and eighth pleas has averred; nor that there has been a failure of the consideration of said bonds and coupons, as in said seventh plea alleged; nor that said bonds and coupons were not made and sold by the defendant as required by the terms of its charter, but came into the possession of said railroad company without sale, and without any authority from the defendant, as defendant in said eighth plea hath alleged; because, they say, that heretofore, to wit: at the May Term, 1856, of the Circuit Court for the county of Dearborn, State of Indiana, the plaintiffs impleaded the said defendant, together with the Ohio and Mississippi Railroad Company (who was a formal defendant only) in the action in the first replication to the second plea of said defendant mentioned, for the recovery of the coupons which were attached to said bonds, and which fell due on the 1st day of January, 1856, and therein filed their complaint against said defendant, said city of Aurora, to which complaint said city of Aurora filed an answer in two paragraphs, to the first of which paragraphs the plaintiffs filed a demurrer, and to the second of which the said plaintiffs filed a reply, to which the said city demurred; the said complaint, answers, reply, and demurrer being the same which are specially set forth in the first replication herein filed to the second plea of the defendant in this action—which demurrers were determined by the said circuit court in favor of the said plaintiffs, as in said first replication alleged, and final judgment was rendered therein in favor of the said plaintiffs, and against said city for the amount of said coupons due January 1st, 1856, in manner and form as is set forth in said first replication, to which, for greater certainty reference is hereby made. And the plaintiffs aver that said judgment is still in force, that the plaintiffs and the city of Aurora named as parties in that action are the same parties as in this suit, and that the said fifty bonds with coupons referred to therein, in the complaint in that action mentioned, and the fifty bonds with the coupons referred to therein, in the declaration in this suit mentioned, are the same identical bonds: all of which the said plaintiffs are ready to verify. Wherefore, the plaintiffs pray judg-

ment if the said defendant ought to be admitted as against the said record, to aver by said third plea that the said Ohio and Mississippi Railroad Company was not on the of September, 1850, nor at any time previous thereto a chartered company for making a road to said city of Aurora, nor for doing any act or thing for the benefit of said city, or for the promotion of its local interests; and that on the 28th of September, 1850, when the subscription was made by the council of said city, for fifty thousand dollars in capital stock in said railroad company, its road was not located to or through said city of Aurora, and that said company had not on or before that day determined the route of said road, nor whether it should be located to or through said city, and that said company was not then constructing, and had not previously been engaged in constructing, their road to or through said city, and that the plaintiffs at the time they became the holders and bearers of said bonds and coupons, had notice of said facts; nor by said fourth plea to aver that a majority of the qualified voters of said city did not at an annual election signify their assent to the making of said subscription by expressing on their tickets that they were in favor thereof, and that a majority of the qualified voters of said city did not require the same to be done, nor confer upon the said council any authority to subscribe for said stock and issue said bonds and coupons, of which said plaintiffs had notice; nor to aver that the said railroad was not chartered for making a road to said city, and that said company did not determine until the 23d of July, 1852, to locate said road to said city, and that said road was not located to said city until months thereafter, of which facts the plaintiffs had notice, as in said fifth plea is alleged; nor that said bonds and coupons, as the defendant in its several pleas first above mentioned has averred, or that there has been a failure of consideration of said bonds and coupons as in said seventh plea alleged, or that said bonds and coupons were not made and sold by the defendant as required by the terms of its charter, but came into the possession of said railroad company without such sale, and without any authority from the defendant, as in said eighth plea the defendant hath alleged.

6th rep.—And the said plaintiffs, as to the said plea by the said defendant thirdly above pleaded, say that the defendant ought not to be permitted in its said plea to aver that the said bonds in the first count of the declaration mentioned and the coupons attached

thereto were unauthorized and void, because a majority of the qualified voters did not, at an annual election, signify their assent to the making of a subscription by said city for the stock of said Ohio and Mississippi Railroad Company, nor require said subscription to be made, or confer upon the city council of said city any power to subscribe for such stock and issue said bonds and coupons in payment therefor, of which the plaintiffs had notice; because, they say, that heretofore, to wit: at the May Term, 1856, of the Circuit Court for the county of Dearborn, and State of Indiana, the plaintiffs impleaded the said defendant, together with the Ohio and Mississippi Railroad Company (who was a formal defendant only) in the action in the first replication to the second plea of said defendant mentioned, for the recovery of the coupons which were attached to said bonds, and which fell due on the 1st day of January, 1856, and therein filed their complaint against said defendant, said city of Aurora, to which complaint said city of Aurora filed an answer in two paragraphs, to the first of which paragraphs the plaintiffs filed a demurrer, and to the second of which the said plaintiffs filed a reply, to which the said city demurred, the said complaint, answer, reply, and demurrers being the same which are specially set forth in the first replication herein filed to the second plea of the defendant in this action, which demurrers were determined by the said circuit court in favor of said plaintiffs, as in said first replication alleged, and final judgment was rendered therein in favor of the said plaintiffs and against the said city for the recovery of the amount of said coupons due January 1, 1856, in manner and form as is set forth in said replication, to which, for greater certainty, reference is hereby made. And the plaintiffs aver that said judgment is still in force; that the plaintiffs and the city of Aurora, named as parties in that action, are the same parties as in this suit; and that the said fifty bonds, with the coupons referred to therein, in the complaint in that action mentioned, and the fifty bonds, with the coupons referred to therein, in the declaration in this suit mentioned, are the same identical bonds: all of which the said plaintiffs are ready to verify. Wherefore, they pray judgment if the said defendant ought to be admitted against the said record to aver that the said bonds, in the first count of the declaration in this case mentioned, and the coupons attached thereto, were unauthorized and void, because a majority of the qualified voters of said city did not at an annual election signify their assent to the making

of a subscription by said city for the stock of said Ohio and Mississippi Railroad Company, nor require said subscription to be made, or confer upon the said city council of said city any power to subscribe such stock, and issue said bonds and coupons in payment therefor, of which the plaintiffs had notice.

[*Note.*—The 7th replication withdrawn.]

8*th rep.*—And for further replication to the plea of the defendant fourthly above pleaded, the plaintiffs say that the defendant ought not to be admitted to aver that a majority of the qualified voters of said city of Aurora did not, at an annual election, signify their assent to said subscription by said city for fifty thousand dollars of the capital stock of said company by expressing on their tickets that they were in favor thereof, because, they say, that in and by each of said bonds the said defendant acknowledged that such bond was issued in conformity with the eighteenth section of the charter of said city, and at the time the plaintiffs became the holders and bearers of said bonds and coupons they relied upon said declaration, and believed it to be true. And this they will verify. Wherefore, they pray judgment if the said defendant ought to be admitted, against their own acknowledgment by the bonds aforesaid, to aver that a majority of the qualified voters of said city had not previously expressed their assent to the making of said subscription, as the charter aforesaid required.

[*Note.*— The 9th replication overruled.]

10*th rep.*—And the said plaintiffs, as to the said pleas by the said defendant thirdly, fifthly, and sixthly above pleaded, say (*precludi non*), because, they say, that at a meeting of the city council of the city of Aurora aforesaid, held in said city on the 28th day of September, 1850, an order was unanimously adopted in the words and figures following:

"Ordered by the city council of the city of Aurora, that whereas, the qualified voters of the city of Aurora, at the annual election of said city, held on the first Monday in April, A. D. 1849, in and for said city of Aurora, signified by a large majority of the votes cast at said election that the city council of said city shall subscribe, on behalf of said city, fifty thousand dollars in the capital stock of

the Ohio and Mississippi Railroad Company, in pursuance of the 18th section of an act of the General Assembly of the State of Indiana, granting to the inhabitants of the town of Aurora a city charter, approved February 14, 1848, John D. Haynes, mayor of said city of Aurora, is therefore hereby authorized and required to subscribe on behalf of said city of Aurora on the stock books of said railroad company one thousand shares, being fifty thousand dollars, in the capital stock of the Ohio and Mississippi Railroad Company, to be expended in the construction of said road in and west of said city of Aurora."

And on the same day the said John D. Haynes, then mayor of said city, at the foot of a certified copy of said order, did make a subscription on behalf of said city on the stock books of said company in the terms following:

"In pursuance of the foregoing order of the city council of the city of Aurora, I, John D. Haynes, mayor of the city, do hereby subscribe on behalf of said city of Aurora in the capital stock of said Ohio and Mississippi Railroad Company one thousand (1,000) shares, $50,000.

"In witness whereof, I, John D. Haynes, mayor of the city of Aurora, have hereunto set my hand and affixed the seal of said city of Aurora this 28th day of September, 1850.

[SEAL.] "JOHN D. HAYNES, *Mayor*."

And the said plaintiffs further say that before the said city received the said one thousand shares of said stock or issued the bonds and coupons in the declaration mentioned in payment therefor, and at the time of the delivery of the same to said company, the said Ohio and Mississippi Railroad Company had constructed and finished their said railroad from Seymour, in the county of Jackson, Indiana, to said city of Aurora, and thence to the mouth of the Great Miama River, and from the Great Miami River to the city of Cincinnati, in the State of Ohio, and was then engaged in extending said railroad westwardly to Vincennes.

[*Note.*—The 11th, 13th, and 15th replications overruled. The 12th, 14th, 16th, 17th, and 18th replications withdrawn.]

—*Record*, pp. 11–20.

[*Note.*—The demurrers to these replications were both general and special. It is not necessary to print them all—they are found in the printed record, pp. 60 to 64, inclusive.

I print the special causes of demurrer to one of these replications. Each of them have the same, and other causes of demurrer, specially set down.]

SPECIAL CAUSES OF DEMURRER.

1st. Because the said replication does not contain facts sufficient to preclude the defendant from setting up and proving the facts in said plea mentioned as a bar to the first count in said declaration.

2d. It does not anywhere appear in said replication that the matters and things in said second plea contained were in issue between the said parties, and adjudicated upon in said suit set out and referred to in said replication; but it does appear in and by said replication that no matter of fact was in issue or tried between the parties, and adjudicated upon in the suit in said replication referred to, but questions of law only.

3d. Because the matters and things alleged in said replication are no sufficient denial or confession and avoidance of the facts in said second plea contained.

4th. Because the matters and things set up in said replication and put in issue are different from the matters and things pleaded in said second plea.

5th. Said replication is otherwise uncertain, informal, and insufficient.

—*Record*, p. 60.

SUBMISSION FOR ASSESSMENT OF DAMAGES.

And thereupon the parties submit this cause *for trial for the assessment of damages;* and the Court having heard all the evidence adduced by the parties, find for the plaintiffs, and assess their damages at the sum of ten thousand five hundred and thirty-four dollars and fifty cents.

It is therefore considered by the Court that the plaintiffs do recover from the said city of Aurora, the defendant, the said sum of ten thousand five hundred and thirty-four dollars and fifty cents ($10,534.50), together with their costs and charges herein laid out and expended, taxed at dollars.

And afterward, in the court aforesaid, and before the judge aforesaid, and at the term thereof last aforesaid, to wit: on the 9th day of November, in the year of our Lord one thousand eight hundred and sixty-five, the following proceedings were had in the above-entitled cause, to wit:

And now comes the defendant in this cause and tenders her bill of exceptions, which is signed, sealed, and allowed, and ordered to be made a part of the record in this case.

—*Record*, p. 200.

BILL OF EXCEPTIONS.

CHARLES WEST AND JOSEPH TORRENCE,
PARTNERS, ETC.
vs.
THE CITY OF AURORA.

Be it remembered at the trial of this cause, at this term of the court, the parties submitted the same to the court upon the record and evidence hereinafter set out, and the plaintiffs offered and gave in evidence the bonds referred to in the first count of the declaration, being fifty in number, from 1 to 50, and which were all exactly alike, except the numbers, and a copy of one of which is hereto attached, and marked A, and made a part hereof; also offered in evidence one hundred and fifty coupons, being fifty coupons for interest falling due on the 1st of January, 1862, fifty coupons falling due on the 1st of January, 1863, and fifty coupons falling due on the 1st of January, 1864; all the said coupons being alike, except their numbers and dates of maturity; and it was admitted that the said bonds were respectively signed by Solomon P. Tumy, who was, at the date of their execution, the mayor of said city, and by Will. W. Conway, who was, at the said date, the clerk thereof, and were sealed with the seal of the said city, and that said coupons were respectively signed by the said Conway, and were attached to the said bonds; and a copy of one of which coupons is in the first count of the declaration set forth; which was all the evidence in said cause.

And thereupon the defendant objected to the allowance of interest upon the said coupons, which objection was overruled, and the defendant excepted to such overruling, and his exception was allowed; and whereupon the Court found for the plaintiffs, and assessed their damages at the sum of $10,534.50, and the defendants objected to said finding on said evidence, and the objection was overruled and exceptions allowed thereto. The defendants

also objected to the holding that, upon the record, the plaintiffs were entitled to recover, and his objection was overruled, and exception taken to such overruling and allowed.

All of which is ordered to be made a part of the record in this case.

And it is certified that Judge McDonald, having been of counsel, did not sit or take any part in the cause.

In testimony whereof, the judge of said court has set his hand and seal, and ordered this bill of exceptions to be made part of the record, this 9th of November, 1865.

[SEAL.] DAVID DAVIS.

Exhibit A referred to in said Bill of Exceptions.

No. 1. United States of America. No. 1.
State of Indiana, $1,000. City of Aurora, $1,000.
Ohio and Mississippi Railroad Company.

The city of Aurora acknowledges itself indebted to the Ohio and Mississippi Railroad Company, or bearer, in the sum of one thousand dollars, negotiable and payable at the North River Bank, in the city of New York, twenty-five years from date hereof, upon the presentation and delivery of this certificate, bearing an interest of six per cent. per annum, payable annually, on the 1st day of January, at said bank, in the city of New York, upon presentation and delivery of the proper coupon hereto attached, signed by the clerk of the said city, and at all times the holder shall have a lien on the stock of said city in said company, for which this is received in payment, and may exchange the same for a like amount of said stock at any time before the first declaration of cash dividends, and be substituted as stockholder in place of said city upon surrender of this bond.

This bond is issued in part payment of a subscription of fifty thousand dollars by said city of Aurora, to the capital stock of the Ohio and Mississippi Railroad Company, by order of the common council of the city of Aurora, on the 28th day of September, A. D. 1850, in pursuance of the eighteenth section of "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter," passed by the General Assembly of the State of Indiana, and approved February 14th, 1848.

Witness the seal of the said city of Aurora and the signatures of the mayor and clerk of said city, this 1st day of January, 1852.

[SEAL.] SOLOMON TUMY,
Mayor of the City of Aurora, Dearborn County, Indiana.
WILL. W. CONWAY,
Clerk of the City of Aurora, Indiana.

Ohio and Mississippi Railroad subscription, $50,000.

City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st day of January, 18 , being annual interest on bond No. —.

$60. WILL. W. CONWAY, *City Clerk.*

—*Record*, pp. 200, 201, 202.

II.

PETITION IN THE CASE IN THE DEARBORN CIRCUIT COURT.

STATE OF INDIANA, *Dearborn County:*

Dearborn Circuit Court, May Term, 1856.

CHARLES W. WEST AND JOSEPH TORRENCE
vs.
THE CITY OF AURORA AND THE OHIO AND MISSISSIPPI RAILROAD COMPANY.

Charles W. West and Joseph Torrence, plaintiffs, complain of the city of Aurora and the Ohio and Mississippi Railroad Company, defendants, and says:

1st. That heretofore, to wit, on the day of September, 1850, the said city of Aurora, by virtue of the authority vested in her by an act of the General Assembly of said State, entitled "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter," approved February 14, 1848, subscribed for and took fifty thousand dollars of the capital stock of the said Ohio and Mississippi Railroad Company, a company chartered to

construct and then constructing a railroad to said city (a majority of the qualified voters of said city having first expressed their assent to such subscription by expressing on their tickets, at an annual election in said city, that they were in favor of the subscription for such stock by the city council of said city); and to raise funds for the payment of said stock, the said city of Aurora made, and sold, and delivered to said Ohio and Mississippi Railroad Company fifty of the bonds of said city, by each of which bonds the said city acknowledged itself indebted to the said Ohio and Mississippi Railroad Company, or to the bearer of such bond, the sum of one thousand dollars, negotiable and payable at the North River Bank, in the city of New York, twenty-five years from the date of such bond, upon the presentation and delivery of the same, bearing an interest of six per cent. per annum, payable annually on the first day of January, at said bank, in the city of New York, upon presentation and delivery of the proper coupons attached to said bond; all of which and all the said interest coupons attached to the same were afterward, to wit, on the day of , to wit, at the county aforesaid, sold, and transferred, and assigned by the said Ohio and Mississippi Railroad Company to the plaintiffs, who ever since have been and now are the holders and owners of the same, which said bonds were sealed with the corporate seal of said city, dated the 1st day of January, 1852, and numbered from one to fifty, both inclusive, a copy of one of which bonds, being of that designated "No. 1," is filed herewith, and the same is a copy of all of said bonds with the exception of the No. by which they are respectively designated.

And the plaintiffs further in fact say that on the 1st day of January, 1856, they were the bearers and owners of that certain note or instrument in writing made by said city of Aurora, called an interest coupon, attached to that of one of said bonds which is designated No. 1, signed by the clerk of said city (a copy of which is herewith filed), by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in said city of New York, on the 1st day of January, 1856, being annual interest on the said bond No. 1; and on said last-named day plaintiff caused the said note or coupons to be duly presented for payment in and at the said North River Bank, and payment of the same was then and there duly demanded and was refused, the said city of Aurora having no funds in said bank for payment thereof. And the plaintiffs

further say that by a statute passed by the Legislature of the State of New York, approved January 1st, 1836, and ever since in force as a law of said State, it was enacted (by the 1st section) "That all notes in writing made and signed by any person, whereby he shall promise to pay to any other person, or his order or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of exchange, according to the custom of merchants." And by the 2d section, "that every such note signed by the agent of any person under a general or special authority, shall bind such person and shall have the same effect and be negotiable as above provided;" and by the 3d section, "that the word person in the two last preceding sections shall be construed to extend to every corporation capable by law of making contracts;" and by section 4th, "that the payee or indorsers of every such note, payable to them or their order, and the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned against the makers and indorsers of the sums respectively, in like manner as in case of inland bills of exchange;" and by a certain other statute, passed and approved on the said 1st day of January, 1836, and ever since in force as a law of the State of New York, it was enacted "that the rate of interest upon the loan and forbearance of any money, goods, or things in action, shall continue to be seven dollars upon one hundred dollars for one year, and after that rate for a greater or less sum, or for a longer or shorter time."—*Record*, pp. 21, 22.

[Here follows a separate count or cause of action on forty-nine other coupons.]

Wherefore, not waiving their right to hold said railroad company liable in an action hereafter on any guaranty of said bonds which it may have made, the plaintiffs make the said Ohio and Mississippi Railroad Company a defendant hereto, only to answer as to its assignment of said bonds and coupons to the plaintiff, and its interest, if any, in the subject of this action, and they demand judgment against the said city of Aurora for $4,000, the amount of said several coupons so unpaid, with interest and costs of protest as aforesaid, and ask for all other proper relief against said city of Aurora. SPOONER & BROWER, *for Plaintiffs.*

—*Record*, p. 39.

[Then follow one of the bonds and fifty coupons.]

DEMURRER TO SAID COMPLAINT.

In the Dearborn Circuit Court, May Term, 1856.

CHARLES W. WEST AND JOSEPH F. TORRENCE
v.
THE CITY OF AURORA AND THE PRESIDENT AND DIRECTORS OF THE OHIO AND MISSISSIPPI RAILROAD COMPANY.
} *Civil action.*

Now comes said city of Aurora, by her attorneys, and demurs to the said plaintiffs' complaint for the following grounds of objection, to wit:

1st. Because the said complaint does not state facts sufficient to constitute a cause of action.

2d. Because the said defendants are improperly joined in said action.

HOLMAN & HAYNES,
Attorneys for the City of Aurora.

—*Record*, pp. 49, 50.

ANSWER IN THE SAME SUIT.

In the Dearborn Circuit Court, May Term, 1856.

CHARLES W. WEST AND JOSEPH F. TORRENCE
v.
THE CITY OF AURORA AND THE OHIO AND MISSISSIPPI RAILROAD COMPANY.

Now comes the said city of Aurora, by her attorneys, and for answer to said complaint says:

1st. That the said Ohio and Mississippi Railroad Company was not chartered to construct, and was not on day of September

1850, at the time when said subscription for the said fifty thousand dollars of the capital stock of said company was made, constructing, a railroad to said city of Aurora, but said company was incorporated by an act of the General Assembly of the State of Indiana, entitled "An act to incorporate the Ohio and Mississippi Railroad Company," which act took effect on the 14th day of February, 1848; that said company was, by virtue of the 13th section of said act, authorized to survey, locate, and construct a railroad on the most direct and practicable route, between Lawrenceburg, on the Ohio River, and Vincennes, on the Wabash River, having in view the interests of the company and the convenience of the citizens of the State of Indiana, and to extend eastwardly, on the like most direct and practicable route, to the city of Cincinnati, in the State of Ohio, and to extend westward, on the like most direct and practicable route, through the State of Illinois, to the city of St. Louis, in the State of Missouri; that the said company was not authorized to construct, and never has since the incorporation thereof hitherto engaged in, proposed, commenced the construction of any road whatever, except the railroad contemplated by the said 13th section of said act of incorporation; that at the time said subscription was made as aforesaid, the said company had not located their said road between the points designated in said 13th section, but afterward, to wit: on the day of 1852, the said company, in determining the route of said road between the said city of Cincinnati, in the State of Ohio, and the city of St. Louis, in the State of Missouri, located the same through the said city of Aurora, since which time the said company has been engaged in the construction of said railroad as located as aforesaid, and no other road whatever.

And said defendant further says that said subscription was made for capital stock of said company, and said bonds and coupons were issued in payment of said subscription and accruing interest thereon, and for no other purpose whatever. Wherefore, the city of Aurora, defendant aforesaid, says that the said company was not chartered to construct, and were not at the time of said subscription engaged in the construction, of a railroad to said city of Aurora, within the meaning of the 18th section of the act incorporating said city, and said subscription, and the bonds and coupons issued thereon, were therefore unauthorized and void.

2d. That the Ohio and Mississippi Railroad Company was not

chartered to construct, and were not, on the day of September, 1850, at the time when said subscription was made, constructing a railroad to the city of Aurora.

HOLMAN & HAYNES,
Attorneys for the City of Aurora.

—*Record, pp.* 50, 51.

DEMURRER TO THE FIRST PARAGRAPH.

In the Dearborn Circuit Court, May Term, 1856.

CHARLES W. WEST AND JOSEPH TORRENCE
v.
THE CITY OF AURORA AND THE OHIO AND MISSISSIPPI RAILROAD COMPANY.

The plaintiffs demur to the first paragraph of the defendants' answer herein, and say that the same is not sufficient in law to bar the plaintiffs' action.

SPOONER & BROWER.

—*Record, p.* 51.

REPLY TO SECOND PARAGRAPH.

In the Dearborn Circuit Court, May Term, 1856.

CHARLES W. WEST AND JOSEPH TORRENCE
v.
THE CITY OF AURORA AND THE OHIO AND MISSISSIPPI RAILROAD COMPANY.

The plaintiffs reply to the second paragraph of the defendants' answer, and say that the said Ohio and Mississippi Railroad Company was chartered by an act of the General Assembly of this

State, entitled "An act to incorporate the Ohio and Mississippi Railroad Company," which took effect on the 14th of February, 1848, and by virtue thereof has constructed and finished a railroad from Seymour, in the county of Jackson, in this State, to the said city of Aurora, and thence to the mouth of the Great Miami River; and is now engaged in extending said road from Seymour westward to Vincennes, having also finished said railroad from the said Miami River to the city of Cincinnati, and the said bond, in complaint referred to, with the coupon attached, were issued and delivered to the said Ohio and Mississippi Railroad Company by the said city of Aurora, after the said railroad had been surveyed and located at and where the same has since been constructed, and for the purpose in the complaint alleged.

SPOONER & BROWER.

[Which demurrer was overruled.]

—*Record, pp.* 51, 52.

III.

DECLARATION IN THE CASE IN THE CIRCUIT COURT OF THE UNITED STATES.

Circuit Court of the United States for the District of Indiana, May Term, 1857.

Charles W. West and Joseph Torrence, citizens and residents of the State of Ohio, partners under the name and firm of C. W. West & Co., complain of the city of Aurora, a corporation by virtue of the laws ot the State of Indiana, and a citizen and resident thereof, on a plea of assumpsit; *for that, whereas,* the said defendant, by virtue of the power conferred by an act of the General Assembly of the State of Indiana, entitled "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter," approved February 14th, 1848, did lawfully and in due form, and for a valuable consideration, execute and issue fifty bonds, under the seal of said corporation, and the signature of the mayor and

clerk thereof, and bearing date the 1st day of January, 1852, whereby the defendant acknowledged indebtedness to the Ohio and Mississippi Railroad Company, or bearer, in the sum of one thousand dollars in each of said fifty bonds, negotiable and payable at the North River Bank, in the city of New York, twenty-five years from the date thereof, upon the presentation and delivery of said bonds, bearing an interest of six per cent. per annum, payable annually on the 1st day of January, at said bank, in the city of New York, upon the presentation and delivery of the proper coupons thereto attached, signed by the clerk of said city, the defendants; *and whereas*, the plaintiffs, for a valuable consideration, have become the legal holders, owners, and bearers of said fifty bonds and the coupons thereto attached, and the defendants having failed to pay the annual instalment of interest due upon said bonds, as they promised to do to plaintiffs, the legal holders, owners, and bearers thereof, and as called for by the proper coupons thereto attached, a right of action hath accrued to the plaintiff, against the defendants thereupon, which said coupons, being fifty in number, and all of the following tenor and effect, with the exception that each coupon is numbered differently, and bears the same number as the bond to which it belongs, viz:

"Ohio and Mississippi Railroad subscription, $50,000.

"City of Aurora, Indiana, will pay the bearer sixty dollars, at the North River Bank, in the city of New York, on the 1st of January, 1857, being annual interest on bond No. 1.

"$60. WILL. W. CONWAY, *City Clerk.*"

By which said fifty coupons, for the sum of sixty dollars each, the defendants, in consideration of the premises, promised to pay the plaintiffs, the legal owners and bearers thereof, the sum of three thousand dollars, at the North River Bank, in the city of New York, on the 1st day of January, 1857, which said term has elapsed, and the defendant, wholly regardless of the promise made as aforesaid, has failed to pay said sum of money, or any part thereof, at the time or place promised as aforesaid, according to the tenor and effect of said fifty coupons, or at any other time and place.

And whereas, the defendants afterward, on the 3rd day of February, 1857, in consideration of the premises, then and there prom-

ised to pay the said several sums of money to the plaintiffs on request; yet the defendant hath disregarded the promises so made, and hath not paid the said several sums of money, nor either of them, nor any part thereof, to the damage of the plaintiff ten thousand dollars; and therefore they bring suit.

B. U. McLEAN and SPENCER P. BROWN,
Attorneys for Plaintiffs.

—*Record, pp.* 55, 56.

DEMURRER TO THE SAME.

That the plaintiffs ought not to have their action against her, because, she says, that the declaration aforesaid, as to the first count thereof, and the matters and things therein contained, are not sufficient in law to maintain the action aforesaid, and that she is not bound in law to answer the same. Therefore, she prays judgment, and that the said plaintiffs be barred of their said action against her.

By DUMONS, TORBERT & HOLMAN,
Attorneys.

And, for causes of demurrer, the defendant shows the following:

1st. That the said declaration does not show that the said bonds were issued in pursuance of a vote taken of the inhabitants of said city.

2d. That the said plaintiffs set forth more than one cause of action in their first count. Wherefore, the said count is double in this that each separate coupon is a distinct cause of action.

3d. That the plaintiffs made no property of the bonds sued on.

4th. That an action of assumpsit can not be maintained on a bond, and for other good and sufficient causes, etc.

—*Record, p.* 56.

IV.

SECOND SUIT IN THE DEARBORN CIRCUIT COURT.

COMPLAINT.

CHARLES W. WEST AND JOSEPH F. TORRENCE
vs.
THE CITY OF AURORA AND THE OHIO AND MISSISSIPPI RAILROAD COMPANY.

State of Indiana, Dearborn County:

Charles W. West and Joseph F. Torrence, plaintiffs in this suit, complain of the said city of Aurora and the Ohio and Mississippi Railroad Company, defendants, and say for first cause of action herein as follows:

1st. That heretofore, to wit: on the day of September, 1850, the said city of Aurora, by virtue of the authority vested in her by the act of the General Assembly of the State of Indiana, entitled "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter," approved February 14, 1848, subscribed for and took fifty thousand dollars of the stock of the said Ohio and Mississippi Railroad Company, a company chartered to construct, and then constructing a railroad to said city, a majority of the qualified voters of said city having first expressed their assent to such subscription by expressing on their tickets, at an annual election in said city, that they were in favor of the subscription for said stock by the said city council of said city; and to raise funds for the payment of said stock, the said city of Aurora made and sold, and delivered to the said Ohio and Mississippi Railroad Company, fifty of the bonds of said city, by each of which bonds

the said city acknowledged itself indebted to the said Ohio and Mississippi Railroad Company, or to the bearer of such bond, in the sum of one thousand dollars, negotiable and payable at the North River Bank, in the city of New York, twenty-five years from the date of such bond, upon the presentation and delivery of the same, bearing an interest of six per centum per annum, payable annually on the 1st day of January, at said bank, in the city of New York, upon the presentation and delivery of the proper coupon attached to such bond; all of which bonds, and the said interest coupons attached to the same, were afterward, to wit: on the day of , 1852, to wit: at the county aforesaid, sold and transferred, and assigned and delivered, by the said Ohio and Mississippi Railroad Company, to the plaintiffs, who ever since have been, and now are, the holders and owners of the same, which said bonds were sealed with the corporate seal of said city, dated the 1st day of January, 1852, and numbered from one (1) to fifty (50), both inclusive, a copy of one of which bonds, being of that designation as number one, is filed herewith, and the same is a copy of all of said bonds, with the exception of the number by which they are respectively designated. And the plaintiffs further, in fact, say that on the 1st day of January, 1858, they were the bearers and owners of that certain note or instrument in writing made by said city of Aurora, called an interest coupon, attached to that one of said bonds which is designated No 1, signed by the clerk of said city, a copy of which is herewith filed, by which said city promised to pay to the bearer sixty dollars, at the North River Bank, in the said city of New York, on the 1st day of January, 1858, being annual interest of said bond No. 1; and on said last-named day they caused said note or coupon to be duly presented for payment, in and at the said North River Bank, and payment of the same was then and there duly demanded and refused, the said city of Aurora having no funds in said bank for payment thereof. And the plaintiffs further say that by a statute passed by the Legislature of the State of New York, and approved January, 1836, and ever since in force as a law in the State of New York, it was enacted by the first section thereof, "that all notes in writing made and signed by any person, whereby he shall promise to pay to any other person or his order, or unto the bearer, any sum of money therein mentioned, shall be due and payable as therein expressed, and shall have the same effect and be negotiable in like manner as inland bills of

exchange, according to the custom of merchants;" and by the second section, "that every such note signed by the agent of any person, under a general or special authority, shall bind such person and shall have the same effect and be negotiable as above provided;" and by the third section, "that the word *person*, in the two last preceding sections, shall be construed to extend to every corporation capable by law of making contracts;" and by section fourth, "that the payees and indorsers of every such note, payable to them or their order, and to the holders of every such note payable to bearer, may maintain actions for the sums of money therein mentioned against the makers and indorsers of the same respectively, in like manner as in cases of inland bills of exchange."

And by a certain other statute passed and approved on the 1st day of January, 1836, and ever since in force as a law of the State of New York, it was enacted "that the rate of interest upon the loan and forbearance of any money, goods, or things in action, shall continue to be seven dollars upon one hundred dollars for one year, and after that date for a greater or less sum, or for a longer or shorter time."

—*Record*, pp. 71, 72.

[Here follows a copy of the bond and coupon, and one hundred and ninety-nine other special causes of action on so many different coupons.]

Wherefore, and not in any manner waiving their right to hold said Ohio and Mississippi Railroad Company liable in an action hereafter to be brought upon a guaranty of said bonds and interest thereon which it may have made to said plaintiffs, the plaintiffs make the said Ohio and Mississippi Railroad Company defendants hereto, to answer only as to its assignments of said bonds and coupons and the delivery thereof to said plaintiffs, and as to any interest of said railroad company in the said subject of this action; and said plaintiffs demand judgment against the said city of Aurora for the amount of said coupons, which are severally still due and wholly unpaid, viz: $12,000, and interest on said several coupons from the time they respectively fall due, and for costs and charges of protest, and all other proper relief against said city of Aurora, and generally for damages to the amount of twenty thousand dollars.

—*Record, p.* 172.

ANSWERS TO THE SAME.

Second. And for further answer to said complaint, said city of Aurora says that the Ohio and Mississippi Railroad Company was not a chartered company for making a road or roads to the said city of Aurora, or for doing any other act or thing touching said city, or for the promotion of the local interests thereof. And the said defendant, the said city of Aurora aforesaid, specially avers that on the day of September, 1850, when the said subscription was made by the said city council of said city of Aurora for fifty thousand dollars of the capital stock of said Ohio and Mississippi Railroad Company, the road of said company, that is to say, the Ohio and Mississippi Railroad, was not located to or through the said city; and the said Ohio and Mississippi Railroad Company was not on the said day of September, 1850, the day on which said subscription was made, constructing, nor had said company at any time before that day been engaged in the construction of a railroad, or any other road to or through or from the said city of Aurora, nor was the said company required by their act of incorporation to construct a road to, through, or from said city. Wherefore, the said city of Aurora says that the city council thereof were not at the time said subscription was made as aforesaid, authorized to make the same, and the said subscription and bonds issued thereon were unauthorized and void.

Third. And for further answer herein, the said city of Aurora says that the said Ohio and Mississippi Railroad Company was not a chartered company for making a road or roads to the city of Aurora, and was not, on the day of September, 1850, when said subscription for fifty thousand dollars of stock was made, making, and had not been at any time before that day engaged in making, a railroad or any other road, to, through, or from said city of Aurora, but said company was incorporated by the General Assembly of the State of Indiana, entitled "An act to incorporate the Ohio and Mississippi Railroad Company," which act took effect on the 14th day of February, 1848; that said company was, by virtue of the 13th section of said act, authorized to survey and locate and con-

struct a railroad in the most direct and practicable route between Lawrenceburg, on the Ohio River, and Vincennes, on the Wabash River, having in view the interests of the company and the convenience of the citizens of the State of Indiana, and to extend eastwardly on the like most direct and practicable route to the city of Cincinnati, in the State of Ohio, and to extend westwardly on the like most direct and practicable route, through the State of Illinois, to the city of St. Louis, in the State of Missouri; that the said company were not authorized, and never has, since the incorporation thereof, been engaged in the construction of any other road whatever, except the railroad contemplated by the said 13th section of said act of incorporation. And the said city of Aurora avers that on the day of September, 1850, the day on which the said city council of said city of Aurora made said alleged subscription of fifty thousand dollars of the capital stock of said railroad company, the said company had not located their said road between the points designated in said 13th section of said act of incorporation, and were not engaged in making their said railroad to, through, or from the said city of Aurora. And the said city of Aurora further avers that on the 1st day of January, 1852, the day on which said bonds were signed and issued, and delivered to said company by the city council of said city, *the said company were not making, nor had said company at any time before the* 1st *day of January*, 1852, *been engaged in making, their said road to or through the said city of Aurora, nor had said company located or determined to locate their road to or through the said city of Aurora, on the said* 1st *day of January*, 1852, *or at any time preceding that day.* And the said city avers that said subscription was made for capital stock of said company, and said bonds and coupons were issued in payment of said subscription, and accruing interest thereon, and for no other purpose whatever. Wherefore the city of Aurora, defendant aforesaid, says that the Ohio and Mississippi Railroad Company was not a company chartered for making a road or roads to said city within the meaning of the 13th section of the act of incorporation of said city to wit: the 18th section of an act entitled "An act granting to the citizens of the town of Aurora, in the county of Dearborn, a city charter," approved February 14, 1848, or to any other act or thing touching the local affairs of said city within the meaning of said 18th section of said act, and that said company had not at or before the time when the said subscription

was made, nor on or before the 1st day of January, 1852, when said bond and coupons were issued and delivered to said company, located their said road to or through said city of Aurora. Wherefore, she says that said act of the city council of said city in making said subscription, or issuing said bonds and coupons as aforesaid, were illegal, unauthorized, and void.

Fourth. And for further answer herein, the said city of Aurora says *that a majority of the qualified voters of said city did not, at an annual election held in said city prior to the time when said subscription was made by said city council, express upon their tickets that they were in favor of the subscription by the city council of said city of fifty thousand dollars of the capital stock of the Ohio and Mississippi Railroad Company, or of any amount of stock whatever in said company.* And the defendants aver that said Charles W. West, one of said plaintiffs, was at and before the time when said subscription was made, and said bonds were issued and delivered to said company, a director in said company. Wherefore, the said city of Aurora says that the subscription made as aforesaid by said city council, as set forth in said plaintiffs' complaint, was unauthorized and void, and the bonds and coupons issued thereon as aforesaid, unauthorized and void.

Fifth. And for further answer herein, the said city of Aurora says that she never did at any time sell the said bonds to the said company as in the said complaint alleged, and the said plaintiffs are not the legal holders thereof, but the said bonds and coupons were deposited without consideration with said company, without any power or authority whatever to sell or dispose of the same, which fact was well known by said plaintiffs, who received the same from said company in payment of a debt due by said company to them. Wherefore, the said city of Aurora says that the said plaintiffs are not the legal bearers or holders of said bonds or coupons thereunto attached.

Sixth. And the said city of Aurora, defendant aforesaid, for further and additional answer to said complaint, says that the Ohio and Mississippi Railroad Company was incorporated by an act of the General Assembly of the State of Indiana, entitled "An act to incorporate the Ohio and Mississippi Railroad Company," which took effect on the 14th day of February, 1848; that said company was not incorporated or chartered for the purpose, or with the design of constructing a railroad or any other road to, through, or

from the said city of Aurora, but by the 13th section of said act of incorporation, it is provided as follows: That the president and directors of said company shall be, and they are hereby, invested with all the rights and powers necessary and proper for the survey, location, construction, and repairing of a railroad on the most direct and practicable route between Lawrenceburg, on the Ohio River, and Vincennes, on the Wabash River, having in view the interests of the company and the convenience of the citizens of the State of Indiana, and to extend eastwardly on the most direct and practicable route to the city of Cincinnati, in the State of Ohio, and to extend westwardly on the like most direct and practicable route through the State of Illinois to the city of St. Louis, in the State of Missouri. And the said defendant avers that said company was not authorized to construct, and have never constructed or commenced or attempted the construction of any other road whatever, except the railroad in said section of said act designated and provided for.

And the said city of Aurora avers that at the time of the annual election in said city in the year 1849, on the first Monday in April, 1849, when the alleged vote was taken in said city, *and when it is alleged a majority of the qualified voters of said city expressed upon the tickets that they were in favor of the subscription by the city council of said fifty thousand dollars of the capital stock of said company* (and the defendant expressly charges and asserts that no vote was ever taken at any other time by the citizens of said city in favor of a subscription to the capital stock of said company, nor was there ever any other expression whatever on the part of said qualified voters at any election whatever on the subject aforesaid), *the said company had not surveyed and located their said railroad so as to make said city a point on the route thereof, and had in truth made no location thereof whatever, and were not constructing or beginning to construct the same.*

And said defendant further says that at the time said subscription was made by said city council, to wit: on the day of September, 1850, the said company had not located their said road to, through, or from said city, and were not engaged in the construction of said road to, through, or from said city.

And said city further says that on the 1st day of January, 1852, when the said bond and coupons were issued and delivered to said company, as alleged by said plaintiffs in their complaint, the said

road nor any part thereof had been located, and the said president and directors had not located the same to said city, or through or from the same, and said city was not by the act of said president or directors, or otherwise, a point on the route of said road, and said company were not making their said road to said city, or through or from the same; *but afterward, to wit: on the 6th day of July*, 1852, *said company made a location of said road by virtue of the authority vested in them by the act aforesaid; and the said city filed herewith the order of the city council of said city directing the subscription for fifty thousand dollars' worth of the capital stock of said company, on the authority of which said subscription was made, and also the resolutions of the president and directors of said company and executive committee thereof, locating said road to said city of Aurora.* Wherefore, said city of Aurora says that the said subscription by the city council of said city, and the bonds and coupons issued thereon as aforesaid, were unauthorized and void. And said city avers that the said plaintiff, Charles W. West, was, during all the aforesaid time and at the time of the location of said railroad, a director of said company, and the said plaintiffs at the time they received said bonds, well knew all of the facts aforesaid.

—*Record*, pp. 174–177.

DEMURRERS TO THE SECOND, THIRD, FOURTH, AND SIXTH ANSWERS.

CHARLES W. WEST AND JOSEPH TORRENCE

v.

THE OHIO AND MISSISSIPPI RAILROAD COMPANY.

The said plaintiffs now come and severally demur to the second, the third, fourth, and sixth paragraphs of the defendants' answer for the reason that the same and each of them do not contain sufficient facts to constitute a defense to the said plaintiffs' action.

P. L. SPOONER,
A. BROWER, *for Plaintiffs.*

—*Record*, p. 179.

REPLY TO FIFTH ANSWER.

2d. And for further reply to the fifth part of the said answer the plaintiffs say, that they purchased said bonds and coupons from said Ohio and Mississippi Railroad Company in good faith, and paid said company fully for the same without any notice that the said city of Aurora had not sold the said bonds to said company, and without any notice that said bonds and coupons, or any of them, had been deposited by said city with said company, without any consideration, or without any power to sell and dispose of the same, and the plaintiffs are, and at the time of bringing this suit were, the legal holders and bearers and owners of said bonds and coupons in the complaint referred to and described. And the said plaintiffs say that before the commencement of this suit the said Ohio and Mississippi Railroad Company had finished and constructed their said railroad from the mouth of the Great Miami River to and through the city of Aurora, to the town of Vincennes, on the Wabash River, and from the mouth of the Great Miami River to the city of Cincinnati, Ohio.
—*Record*, p. 179.

DEMURRER TO SAID REPLY.

Now comes the said city of Aurora, one of said defendants, by Holman & Haynes, her attorneys, and demurs to the second paragraph of said plaintiffs' reply, for the following grounds of objection:

1st. Because the said paragraph of said reply does not state facts sufficient to enable the said plaintiffs to maintain their said action.
—*Record*, p. 180.

REJOINDER OF DEFENDANTS.

Circuit Court of the United States for the District of Indiana.

CHARLES W. WEST AND JOSEPH F. TORRENCE

vs.

THE CITY OF AURORA.

And for a rejoinder to the said replication of the said plaintiffs, to the second, third, fourth, fifth, sixth, seventh, and eighth pleas, the defendant says that the plaintiffs ought not to have or maintain their said action against her upon the first count of the declaration, by reason of anything in the said replication alleged, because, the defendant says, that heretofore, to wit: on the 26th day of April, 1861, the plaintiffs then being citizens and residents of the State of Ohio, brought their action in the Circuit Court of Dearborn county of Indiana, and therein impleaded the defendant and the Ohio and Mississippi Railroad Company (which latter party was declared to be a nominal party merely), and in her complaint in said suit they did set up said bonds referred to in the said replication, and the coupons attached thereto, and falling due in the years 1858, 1859, 1860, and 1861, being two hundred coupons of $60 each, then due and in the said complaint set up, and allege, substantially, the same facts as are alleged in the first count of the declaration in this suit. *And thereupon the defendants pleaded thereto, substantially, the same pleas as the third, fourth, fifth, sixth, seventh, and eighth pleas filed in this case. And in the second paragraph of her answer therein set up, substantially, the same matter and things contained in the third plea in this case. And in the third paragraph of said answer, set up, substantially, the same matters and things contained in the said fifth and sixth pleas herein. And in the fourth paragraph of her answer set up and alleged that a majority of the qualified voters of the city of Aurora did not, at an annual election held*

in said city prior to the time when said subscription of stock was made in and to the said Ohio and Mississippi Railroad Company, by the city council of said city, expressed upon their tickets that they were in favor of the subscription by said city council of fifty thousand dollars of capital stock in the Ohio and Mississippi Railroad Company, or of any amount of stock whatever in the said company; and that at the time said subscription was made, and said bonds were issued and delivered to the said railroad company, said West, one of the plaintiffs, and a partner of the other, was a director in said company substantially as is alleged in the fourth plea herein. And did, in and by the said fifth paragraph in her answer, aver that the defendant never did sell the said bonds to the said railroad company, as was alleged in the complaint therein, but that the said bonds were deposited, without consideration, with the said company, without any power or authority to sell and dispose of the same, which was well known to the plaintiffs when they received the same from the company in payment of a debt by said company due them.

And in and by the sixth paragraph to said answer aver that the said Ohio and Mississippi Railroad Company was incorporated by an act of the General Assembly of Indiana, which took effect on the 14th day of February, 1848; that said company was not incorporated for the purpose or with the design of building a railroad or any other road to, through, or from the said city of Aurora; but by the 13th section of the said act, it was provided that the president and directors of said company shall have power, and they were thereby invested with the rights and powers necessary and proper for the survey, location, and construction, and repairing of a railroad on the most direct and practicable route to Lawrenceburg, eastward to the Miami River, and westward to Vincennes, on the Wabash River, having in view the interest of the company and the commerce of the citizens of the State of Indiana, and to extend eastward, in the most direct and practicable route, to Cincinnati, in the State of Ohio, and west, on the most direct and practicable route, through the State of Illinois, to St. Louis, in the State of Missouri. And that the said company was not authorized to construct, and never had constructed, or commenced, or attempted to construct any other road but that described in the 13th section of the said act; and did further aver that at the time of the annual election, in said city, in the year 1849, when it was alleged that a

majority of the qualified voters had expressed that they were in favor of the subscription by the city council of the said city of $50,000 of the capital stock of said company (and that no vote on the subject was ever taken at any other time), *the said company had not surveyed and located their said road so as to make the said city a point on the route, and had made no location thereof whatever, and were not constructing or beginning to construct the same;* and that at the time the said subscription was made, to wit: on the 28th day of September, 1850, said company had not located their said road through or from said city; and were not engaged in constructing said road to, through, or from the said city, *and that, on the 1st day of January, 1852, when said bonds and coupons were issued and delivered to said company the said road, nor any part thereof, had not been located. That afterward, to wit: on the 6th day of July, 1852, said company made a location of said road, and did file therewith the order of said city council directing said subscription for said $50,000 of said stock as the authority for said subscription, and the resolution of the president and directors of the said railroad, and the executive committee thereof, locating the said road, and did therein allege that the said subscription, and the issue of said bonds and coupons were unauthorized and void.*

And the plaintiffs in said suit demurred to the 2d, 3d, 4th, and 6th paragraphs of the answer, which demurrer was sustained by the Court, and exceptions taken thereto.

And the plaintiffs therein filed their several replies to the said fifth paragraph of said answer, in the first of which they denied each and all the facts therein set out. And in the second reply to said fifth paragraph they did aver *that they purchased the said bonds and coupons from the Ohio and Mississippi Railroad Company in good faith, and paid the said company fully for the same without any notice that the city of Aurora had not sold the said bonds to the said company,* and *without any notice that the said bonds and coupons, or any of them, had been deposited by said city with said company without any consideration or without any power to sell and dispose of the same.* And that the plaintiffs then were, and at the time of bringing the said suit, the legal holders and bearers of said bonds.

And the said defendant did therein demur to said second reply, which demurrer was overruled by the Court and exception taken thereto.

And thereupon, afterward, to wit: on the 23d of May, 1861, the

said case was submitted to a jury, and the plaintiffs gave in evidence the bonds and two hundred coupons declared upon, *and the resolution of the city council of the city of Aurora, authorizing the mayor, John D. Haynes, to subscribe the said stock, being the same set out in the second replication to the 3d, 5th, and 6th pleas herein, to which reference is had as proof of the assent of a majority of the qualified voters of the said city, and no other proof thereof was offered.* And proof of said West, that the plaintiffs purchased said bonds in good faith at 77½ cents on the dollar, and without knowledge of any defect in said bonds, or that they passed into the hands of the said railroad company for safe-keeping, and not for sale, or of the matters and things set up in answer of the defendant.

And the plaintiffs put in two resolutions of the directors of the Ohio and Mississippi Railroad Company, dated July the 6th and July the 23d, and showed that said railroad was not located until the said 6th of July; that being all the evidence of either party on that subject.

And thereupon the Court refused to charge the jury that, unless they were satisfied that the said bonds and coupons were sold by the city of Aurora, or some one by her authorized, that they must find for the defendant, as requested by the defendant.

The Court also refused to charge the jury that, if the said subscription of stock was made prior to the time when said railroad was located to, through, or from said city, they must find for the defendant, as requested by the defendant; and refused to charge that, if the bonds were not actually sold, as the plaintiffs alleged in their complaint, and at the time the said railroad was not surveyed or located to the city of Aurora, they should find for the defendant, as requested by the defendant.

But, at the request of the plaintiffs, charged the jury that, if they believed, from the evidence, that the plaintiffs purchased the bonds from the railroad company in good faith, and paid a valuable consideration therefor, without any knowledge, on their part, of the city of Aurora having any objection to the payment of said bonds, or having objection to the manner in which the city of Aurora made said bonds, they should find for the plaintiffs. To which charge, so given at the request of the plaintiffs, the defendants excepted, and did also except severally to the overruling of each of the charges so asked by them, and refused at the time of such overruling; and said objections were made part of the record,

and a verdict and judgment had in said suit for the plaintiffs; and motion for a new trial was made by the defendants; and, in accordance with the practice of the courts of Indiana, all the evidence was made part of the record, and the case was taken to the Supreme Court of Indiana on appeal, and submitted to said court by the parties upon the question raised in the record, at the May Term of said court, 1864. *And it was, by the said Supreme Court of Indiana, found, held, and adjudicated that the said railroad* (was not a road) *to, or through, or from the said city of Aurora when the subscription was made; and that the said city council of the said city had no authority to issue said bonds and coupons, and that the said West, being a director in said railroad company at the time, was, by the charter of said railroad company, bound to take notice thereof, and of the facts set out in said pleas; and did, at said term of said court, render a judgment against said plaintiffs of reversal, which said judgment remains in full force, unreversed or modified.* All of which will more fully, and at large, appear by the said record now here, and ready to be produced and shown to the Court.

And the plaintiffs further allege that the bonds and coupons declared upon and referred to in said suit were the same as those declared upon and referred to in this suit; that the said plaintiffs and the city of Aurora are the same in each suit; and that the matters of fact in the questions of law put in issue, litigated, and adjudicated upon, were the same as those put in issue in the said 2d, 3d, 4th, 5th, 6th, 7th, and 8th pleas herein. And this the defendant is ready to verify.

Wherefore, she prays judgment if the plaintiffs ought to have or maintain their aforesaid action thereof upon said first count against her.

WM. S. HOLMAN,
T. D. LINCOLN,
JEREMIAH SULLIVAN,
Counsel for Defendant.

UNITED STATES OF AMERICA,
DISTRICT OF INDIANA: }

In the Circuit Court of the United States, District of Indiana.

CHARLES W. WEST AND JOSEPH F. TORRENCE
531 *vs.*
THE CITY OF AURORA.
} *Now in Error in the Supreme Court of the United States.*

I, John D. Howland, Clerk of said Court, certify that from the original record in my office, it appears that rejoinder of the said City of Aurora, filed in said cause November 9th, 1865, to the replication of West and Torrence to the 2d, 3d, 4th, 5th, 6th, 7th, and 8th pleas of said city, in the third paragraph, counting from the end of said rejoinder, these words occur: "And it was, by the said Supreme Court of Indiana, found, held, and adjudicated that the said railroad WAS NOT A ROAD to, or through, or from the said city of Aurora, when," etc.

Witness my hand and the seal of said Court this 31st of January, 1868.

J. D. HOWLAND,
Clerk.

Dw Stanbury - argues

No error in judgt on Common Court - refers to record, 200.

Exception to general 13 Pet. 302. Rec 201

Same parties & same cause of action conclusive as to conclusiveness of former judgt } 24 H. 342

But it is urged that defence now not the same not denied in former suit (1) without authority (2) without consideration (3) failure of consideration

SUPREME COURT OF THE UNITED STATES.

1 Gren. Ev. 572 § 534 - precise point not essential

7 Picks 342.

4 Ell & Black 794

CHARLES W. WEST, *et. al.*
adv.
THE CITY OF AURORA.

In Error, to the U. S. Circuit Court, for the District of Indiana.

If no estoppel, writ of error does not reach point

13 Hen 183 — Sustains judgt a 2d Court

Brief for the Defendants in Error.

THOMAS G. MITCHELL,

Counsel for Defendants in Error.

SUPREME COURT OF THE UNITED STATES.

CHARLES W. WEST, *et. al.* *ads.* THE CITY OF AURORA. } *In Error, to the U. S. Circuit Court, for the District of Indiana.*

Brief for the Defendants in Error.

The record in this proceeding is somewhat voluminous and complicated, because of the number and length of the pleadings and the exemplifications of records in other actions, contained in it. But it will be perceived, after a little patient analysis, that the questions, which it presents for examination, are few and simple.

THE DECLARATION of the Defendants in error, who were the Plaintiffs in the Court below, was in "trespass on the case on promises;" and contained two counts.

First Count. In the first count, it was alleged, that the Plaintiff in error, The City of Aurora, by virtue of an act of the General Assembly of the State of Indiana, approved February 14, 1848, executed and issued, in due form, under her seal, January 1, 1852, fifty bonds, each for $1,000,00, payable twenty-five years after date, to The Ohio and

Mississippi Railroad Company, or bearer, at the North River Bank, in the City of New York, with interest, at the rate of six per cent. per annum, payable annually, at the same place, on the first day of January, on the presentation of the coupons for such interest, attached to the bonds; by a portion of which coupons, the Plaintiff in error promised to pay, to bearer, $3,000,00, January 1, 1862, $3,000,00, January 1, 1863, and $3,000,00, January 1, 1864, in all $9,000,00; and that the Defendants in error had become, prior to the maturity thereof, for a valuable consideration, and in good faith, the holders and bearers of all of the bonds and coupons referred to.

Second Count. The second count of the declaration was for goods sold and delivered, for money had and received, and for money lent and advanced. *Printed Record* 1, 2. *Original Record* 3, 4, 5, 6.

DEMURRERS were filed to both these counts, and the reasons assigned for them, were, as to the first count:

That it was not set forth, that the bonds were issued, in pursuance of a vote of the qualified electors of the City, nor that any proper person had found or determined, that such a vote had been given:

That claims on all the coupons, embraced in the suit, were declared upon collectively, while each coupon was a distinct cause of action; and that it was not shown, that the bonds were issued for municipal purposes:

That there was no allegation of a demand for payment, at the North River Bank:

That the count was otherwise informal and insufficient: and

That it was not set forth, that the Ohio and Mississippi Railroad Company was chartered to make a road, to or through the City of Aurora, nor that its road was one, running to or from that city.

The reasons assigned, for the demurrer to the second count, were:

That no vote of the qualified voters of the city, or other authority to the city officers, was shown, authorizing them to create debts, for goods purchased or for money borrowed:

That separate causes of action were joined:

That it was not set forth, that the debts declared upon were created for municipal purposes: and

That the count was otherwise informal. *Printed Record* 3, 4. *Original Record* 6, 7, 8, 9.

THE PLEAS, filed after the demurrers to the declaration had been overruled, were eight in number; and all of them, except the first, were special pleas to the first count of the declaration.

First Plea. The first one, which was the general issue, was subsequently withdrawn.

Second Plea. The second was a plea, that there was no good or valuable consideration for the bonds and coupons; of which the Defendants in error, when they became the holders of them, had notice.

Third Plea. The third was a plea alleging, that the bonds and coupons were issued to The Ohio and Mississippi Railroad Company, in payment of a subscription of $50,000,00, to the capital stock of that Company, made by the City of Aurora, September 28, 1850; that the city was not authorized to subscribe to the stock of any company, not chartered to make a road to the city, nor to issue and sell bonds to pay for such stock; that at the date of the subscription in this case, The Ohio and Mississippi Railroad Company was not a company, chartered to make a road, and had not made, or determined to make, a road, to or through the city; and that the Defendants in error had

notice of all these facts, when they became the owners of the bonds.

Fourth Plea. The fourth plea alleged, that a majority of the qualified voters of the city did not, as required by the law, authorizing the issue and sale of such bonds, signify their assent, at any annual election, to the subscription, for which the bonds in this instance were issued; and that of this the Defendants in error had notice.

Fifth Plea. The fifth plea, was like the third, except that it alleged, that the location of the railroad, through the city, was not determined upon until July 23, 1852, subsequent to the issue of the bonds, as well as to the stock subscription.

Sixth Plea. The sixth plea was substantially like the preceding one; and was based on the allegation, that the subscription, for the payment of which the bonds were issued, was to stock of a company, not chartered to make, and not having determined to make, a road to or through the City of Aurora.

Seventh Plea. The seventh plea set forth, that at the date of the subscription, the stock taken by the city was worth par; that subsequently, through the gross mismanagement of the directors of the company, this stock became worthless; that one of the Defendants in error, the partner of the other, was a director in the railroad company, and contributed to the mismanagement of its affairs; and that so there was failure of consideration for the bonds and coupons issued by the city, of which the holders had notice.

Eighth Plea The eighth plea alleged, that the bonds and coupons were prepared to be issued and sold, to pay for a subscription to stock in the railroad company; but that they were never sold or delivered; and that they came wrongfully into the possession of the railroad company; of which the present holders had notice, at the time of their

purchase. *Printed Record* 5 *to* 11. *Original Record* 11 *to* 26.

REPLICATIONS, to the number of eighteen, were filed by the Defendants in error; but of these the third, fourth, seventh, twelfth, fourteenth, sixteenth, seventeenth and eighteenth were subsequently withdrawn, and the ninth, eleventh, thirteenth and fifteenth were held to be bad on demurrer, leaving only six in the record.

First Replication. The first replication was to the second plea; and alleged, that, at the May term, A. D., 1856, of the Circuit Court, of Dearborn County, in the State of Indiana, the Defendants in error impleaded the Plaintiff in error, together with The Ohio & Mississippi Railroad Company, (made a party simply as assignor), in an action, for the recovery of the amount of other coupons, on the same bonds, mentioned in the declaration in this case; and therein complained of the Plaintiff in error, that by virtue of an act of the General Assembly of the State of Indiana, she had subscribed to $50,000,00, of the stock of the railroad company, a company chartered to construct, and then constructing a railroad to the city of Aurora, a majority of the qualified voters having first expressed their assent thereto, by their ballots at an annual election, and that to raise funds for the payment of this subscription, the city had issued and sold and delivered the bonds and coupons in the declaration mentioned, and that the Defendants in error had purchased from the railroad company, and were the owners of the bonds and coupons, and that the city refused to pay the coupons then due; and that, in that action, the city filed an answer, averring that the railroad company, at the date of the subscription, had not located its road to or through the city, and so was not a company chartered to construct, and was not constructing, a road to the city, and that the bonds and coupons were unauthorized

and void: and that the Defendants in error filed a demurrer, to one of the paragraphs of the answer, in which this defense was set up, and filed a reply, traversing the allegations of the other paragraph of the answer; to which the city demurred; and that the court sustained the demurrer to the first paragraph of the answer, and overruled the demurrer to the reply to the other paragraph; and that "the said city not desiring to controvert the facts, stated in said reply, but admitting the same, and that the amount of said bonds and coupons is the sum in the complaint stated," judgment was rendered in favor of the Defendants in error, and remained in full force, as was more fully shown by the record of that action, of which profert was made; and that the parties and bonds were the same mentioned in the declaration in this case.

Second Replication. The second replication was to the second, third, fourth, fifth, sixth, seventh and eighth pleas, and set forth substantially in the same form as in the first replication, the recovery of a judgment in the Circuit Court of the United States, for the District of Indiana, at its May term, A. D., 1857, in an action of assumpsit, by the Defendants in error, against the City of Aurora, for the amount of other coupons on the same bonds and interest thereon.

Fifth Replication. The fifth replication, which was to the third, fourth, fifth, sixth, seventh and eighth pleas, set forth the judgment recovered in the Circuit Court of Dearborn County, Indiana, referred to in the first replication, substantially in the same form.

Sixth Replication. The sixth replication set up the same judgment in the same form, except that it was responsive to the fourth plea only, although erroneously stated in the printed record to be a reply to the third plea.

Eighth Replication. The eighth replication was to the fourth plea; and alleged that the city was estopped, by the

recital in the bonds, that they were properly issued, in accordance with the provisions of the law, from denying, that a majority of the qualified voters of the city, at an annual election, signified their assent to the subscription, for the payment of which the bonds were issued.

Tenth Replication. The tenth replication which was to the third, fifth and sixth pleas, set forth the proceedings of the city council of the Plaintiff in error, in which, after reciting that a large majority of the qualified voters had assented to the subscription by the city to $50,000,00, of stock of The Ohio & Mississippi Railroad Company, it was ordered, that the Mayor of the city should make the subscription, and then alleged, that the Mayor under this authority did make the subscription, and that before the city received the certificates for the stock thus subscribed, or issued the bonds to pay for the same, the railroad company had made a road from Seymour eastwardly to Aurora, and thence to Cincinnati, and had begun to construct its road from Seymour, westwardly to Vincennes. *Printed Record*, 11 to 20. *Original Record*, 26 to 51.

Proceedings in the former action in the Dearborn Circuit Court, and in the Circuit Court of the United States, and entries as to the withdrawal of pleadings. *Printed Record*, 21 to 53, and 53 to 58, and 200. *Original Record*, 52 to 127, and 127 to 141, and 439.

A REJOINDER was filed, by the Plaintiff in error, (in addition to, the one filed to a replication afterwards withdrawn), which, it was agreed, should be considered as filed, to all the replications above referred to, which had been held to be good on demurrer, except the tenth, which was the second replication to the third, fifth and sixth pleas; and in this rejoinder it was alleged, that the Defendants in error had recovered another judgment against the City of Aurora, in the Dearborn County, Indiana, Circuit Court, upon other

coupons of the same bonds, and that the Supreme Court of the State of Indiana, had subsequently reversed this latter judgment, for error, and remanded the cause to the lower court for farther proceedings, as was shown by the record in that case of which profert was made. *Printed Record*, 66 to 70, and 70 to 199. *Original Record*, 157 to 168, and 169 to 437.

A demurrer to the rejoinder having been sustained, and portions of the pleadings having been withdrawn as already stated, the cause was submitted to the Court, without the intervention of a jury; and judgment was rendered in favor of the Defendants in error, for $10,534.50, and costs; to which the City of Aurora excepted, and procured her bill of exceptions, to be sealed, and obtained the allowance of a writ of error. *Printed Record*, 200 to 202. *Original Record*, 439 to 445.

From this synopsis of the pleadings, it will be perceived, as was stated at the outset, that the questions to be examined are neither numerous nor complicated. What remains of the case, in the record, is comprised in a declaration containing a special count and the common counts,—seven special pleas to the first count, alleging a want of consideration for the bonds, a want of power to issue them, because the rail-road company to which they were issued, was not a company chartered to make, or actually making, a road to or through the City of Aurora, and because there was no vote of a majority of the voters of the city, authorizing the subscription for which the bonds were issued, a failure of the consideration, by the destruction of the stock, through the mismanagement of the company, and the non-delivery of the bonds,—six replications, four of which set up former adjudications, between the same parties, as to the validity of the same bonds, another of which averred an estoppel, by reason of the recital in the bonds, and the other of which set forth the order of the City Council, and the subscription

to the stock under it, together with an allegation, as to the construction of the railroad to and through the city, before the issue of the bonds,—a rejoinder, setting up the reversal of a judgment, rendered upon coupons of the same bonds,—a judgment rendered in the present case,—and a bill of exceptions, setting out the testimony offered, when this case was submitted to the court for trial.

The utmost that can be claimed by the Plaintiff in error, is that the demurrers to the declaration were improperly overruled; that the demurrers to the first, second, fifth, sixth, eighth and tenth replications, should have been sustained; that the demurrer to the rejoinder should have been overruled; and that the judgment was not sustained by the testimony, set out in the bill of exceptions. As to the pleadings, which were withdrawn, or upon which the decisions on demurrer were adverse to the Defendants in error, there is no longer any room for controversy. And as to the larger portion of the other pleadings and proceedings, it will be unnecessary, to enter into any lengthy discussion.

I. The whole case, as it seems to me, can be disposed of, by a single proposition, viz; that there is nothing to show, that the judgment, of the Court below, was not rendered upon the second count of the declaration. This count was in the ordinary form of the common counts in assumpsit. It was demurred to; but that demurrer has never been, and hardly will be, seriously pressed. After the demurrer was overruled, there was only one plea, the general issue, filed as to this count; which plea was, before the submission of the case for trial, withdrawn. And the record shows, that the case, thus in default for plea to the second count of the declaration, was submitted for trial, "*for the assessment of damages*," and that the bonds and coupons

were given in evidence, *without any objection*, the execution of them, by the officers of the City of Aurora, being admitted. *Printed Record*, 200, 201. *Original Record*, 439 to 442.

If the demurrer to this second count had been improperly overruled, which it was not, that error would have been waived, by the subsequent filing of a plea; and the withdrawal of the plea would not affect the result. *Wheeler* vs. *Curtis*, 11 *Wendell*, 653; *Dearborn* vs. *Kent*, 14 *Wendell*, 183; *Jones* vs. *Thompson*, 6 *Hill*, (*N. Y.*) 621; *Keen* vs. *Younkeman*, 8 *Indiana*, 254; *Rogers* vs. *Smiley*, 2 *Porter*, 249; *Braham* vs. *Collins*, *Minor*, 169; *Cameron* vs. *Armstrong*, 8 *Clarke*; (*Iowa*,) 212; *U. S.* vs. *Boyd*, 5 *Howard*, 29; *McFadden* vs. *Fortier*, 20 *Illinois*, 509; *Sheppard* vs. *Shelton*, 34 *Alabama*, 652; *Burditt* vs. *Burditt*, 2 *A. K. Marsh*, 143.

And if it can not be made affirmatively to appear from the record, as it can not, that the judgment was rendered upon the special count of the declaration, there can be no reversal for error.

II. It can be demonstratively shown, that all the replications, the demurrers to which were overruled, were good and conclusive answers to the pleas. As already stated, four of these replications, the first, second, fifth and sixth, were based upon former adjudications of the same questions, between the same parties; another, the eighth replication, was founded upon the recitals of the bonds; and the remaining one, the tenth, set forth the proceedings of the city, as to the stock subscription, and the acts of the railroad company, in reference to the location of its road. The validity of these replications depends upon the consequences of a former adjudication, the effect of recitals in instruments under seal, and the extent of the authority of city officers, in reference to this class of subscriptions; which three matters will be considered separately, beginning with the last.

1. The tenth replication was to the third, fifth and sixth pleas. The pleas had alleged, that the City of Aurora had no power to subscribe to the stock of any railroad company, unless that company was one, chartered to make a road to the city; that the bonds in the declaration mentioned were issued and disposed of, to pay a subscription to the stock of The Ohio and Mississippi Railroad Company, a company chartered to construct a railroad from Vincennes to Lawrenceburgh, with the privilege of extending it, to St. Louis and to Cincinnati; and that the road was not constructed, nor was it determined that it should be constructed, to or through the city. And this replication set forth the record of the proceedings of the City Council of the City of Aurora, reciting that all necessary proceedings had been taken under the act of the General Assembly of the State of Indiana, and directing the Mayor to make the subscription, and averred, that the Mayor obeyed this order, and that before the certificates of stock were delivered, or the bonds were issued, the railroad company had constructed its road from Seymour to Aurora, and thence to Cincinnati, and was engaged in constructing the remainder of its road from Seymour to Vincennes.

That this company was one, to the stock of which, the city had a right to subscribe, under the authority of the legislation of Indiana, has been settled, by the decision of this Court, in a case strictly analogous. *Wood* vs. *Lawrence Co.*, 1 *Black* 386; in which it was held, that, where counties, through which a road might pass, were authorized to subscribe to stock, any county between the two termini might do so, "without waiting until the route is actually located."

2. The eighth replication was to the fourth plea; which plea denied the validity of the subscription to the stock, and of the bonds issued to pay that subscription, because,

as it averred, a majority of the qualified voters of the city did not, as required by law, signify their assent to the subscription, by expressing their assent on their ballots, at an annual election. This replication was, that the city was estopped to deny such assent of the voters, because in each of the bonds, the city acknowledged that they were issued, in conformity with the provisions of the law, upon which recital the Defendants in error relied, when they purchased the bonds, believing the statement to be true.

The question raised by the demurrer to this replication has, also, been decided by this Court. *Bissell* vs. *City of Jeffersonville;* 24. *Howard* 287; in which it was decided, that "whether three-fourths of the legal voters had petitioned or not, was a question of fact;" and as settled by the court, in previous cases, the council was the proper tribunal to decide the question; and a city could not, any more than an individual, by its representations or silence, involve others in onerous engagements, and then defeat their calculations, induced by its own conduct; *pp.* 298, 299, 300. *Knox Co.* vs. *Aspinwall;* 21 *Howard* 544. *Zabriskie* vs. *C. R. R. Co.*; 23 *Howard* 400.

3. The question, however, as to the sufficiency of the first, second, fifth and sixth replications, is the one, which has been most earnestly discussed hitherto, and which is the most interesting, if not the most difficult one arising upon the record. These replications set up former recoveries upon other coupons of the same bonds, in actions between the same parties, as estopping the City of Aurora from denying the validity of the bonds.

The general principle, that the judgment of a court, of competent authority, upon a point directly put in issue, is conclusive, between the same parties, whenever the same matter, is sought to be litigated in a subsequent action, is perfectly well settled.

Lord Coke states the law to be, as resolved by the Judges of the King's Bench, that "when one is barred in any suit or action, by judgment *on demurrer, confession, verdict, &c.*, he is barred as to that, *or the like action of the like nature*, for the same thing, forever." *Ferrar's Case*, 8 *Rep.* 7.

And this doctrine has been recognized, reannounced and applied to new cases, as they have arisen, in a long and undisturbed current of decision.

"If judgment is had on the merits, then it bars all other personal suits, for the same cause of action." *Hutchin* vs. *Campbell*, 2 *W. Blackstone*, 827, 831.

"If an action be brought, and the merits of the question be discussed between the parties, and a final judgment be obtained by either, the parties are concluded and can not canvass *the same question* again in another action, although perhaps some question or argument might have been urged upon the first trial, which would have led to a different judgment." *Grant* vs. *Ramsey*, 7 *Ohio St.* 157; in which the language of Lord Kenyon, as cited in *Broom's Legal Maxims* 243, and 7 *Term Rep.* 456, is quoted and approved.

"The judgment of a court of competent jurisdiction, upon a question directly involved in the suit, is conclusive in a second suit, between the same parties, depending on *the same question*, although the subject matter of the second action be different." *Doty* vs. *Brown*, 4 *Comstock*, 71; *Babcock* vs. *Camp*, 12 *Ohio St.* 11.

"The law is well settled, that the judgment of a court of concurrent jurisdiction, directly upon *the point*, is as a plea in bar, or as evidence, conclusive, between the same parties, upon *the same matter*, directly in question in another court." *Gardner* vs. *Buckbee*, 3 *Cowen*, 120; *Bent* vs. *Sternberg*, 4 *Cowen* 559; *Ostram* vs. *Morewood*, 3 *East.* 346.

"A judgment of a court of competent jurisdiction, upon a point sought to be litigated, between the same parties, is

res judicata." "It is not necessary, that the Plaintiff's claims in both suits should be identical." "If they arise out of the same transaction, and the defense is equally applicable to each suit, the first judgment will be conclusive." And "a judgment *upon demurrer*, is equally conclusive, with one rendered upon a verdict." *Bouchaud* vs. *Dias*, 3 *Denio*, 238.

"The party against whom a judgment has been rendered, can not get rid of its effect, as an estoppel, by the allegation of his own neglect, since, in the language of Chancellor Kent, it is a sound and salutary principle, that every person is bound to take care of his own rights and vindicate them in due season. Hence it has long been settled, that if a Defendant, having the means of defense in his power, neglect to use them, and suffers a recovery to be had against him, in a competent tribunal, he is forever barred." *Birckhead* vs. *Brown*, 5 *Sandford*, (*S. Ct. of N. Y.*) 135; *Le Guen* vs. *Gouveneur*, 1 *Johns. Cases*, 502; *Duchess of Kingston's Case*, 11 *State Trials*, 261.

The case of *Bouchaud* vs. *Dias*, 3 *Denio*, 238, decided, that, where two bonds were given at the same time, and in an action, upon one of them, a demurrer to a plea of release, was sustained, and judgment rendered for the Defendant, that judgment *on demurrer*, was conclusive, between the same parties, in an action upon the other bond, where the same release was relied upon.

The case of *Gardner* vs. *Buckbee*, 3 *Cowen*, 120, was brought on one of the notes, given for the purchase money of a vessel, and the defense was an allegation of fraud in the sale. The court held, that a judgment of another court, in an action between the same parties, on another of the notes, given for the same purchase money, the same defense having been relied upon, was conclusive, as to the question of fraud.

The case of *Birckhead* vs. *Brown*, 5 *Sandford*, (*S. Ct. N. Y.*)

135, was an action based upon drafts, which it was alleged, that the Defendants, had agreed should be accepted in Liverpool. There had been a former suit, between the same parties, based upon other drafts, claimed to be within the terms of the same agreement; in which a judgment for the Plaintiff, in the Superior Court of the City of New York, was reversed in the Supreme Court, because, as matter of law, the Defendants were not liable; and the judgment of the Supreme Court was affirmed, in the Court of Errors, on an equal division. The judgment in the first suit was relied upon as a defense to the second; and the case, which involved $50,000,00, was elaborately argued by W. M. Evarts and Daniel Lord for the Plaintiff, and by F. B. Cutting and Geo. Wood for the Defendant.

Mr. Justice Duer, delivering the unanimous opinion of the Court, after an able review of the authorities, held that the judgment in the former action might be reversed if erroneous; but that, so long as it remained in force, the parties were "estopped from denying *either the facts or the law*, upon which it proceeded;" and that a judgment is "conclusive, as to *every question*, upon which the right of the Plaintiff to recover, or the validity of a defense in another action, is found to depend, and upon the determination of which, it appears from the record, or is shown by extrinsic proof, that the judgment was in reality founded;" and that "whether the facts are admitted by the parties, or found by the jury, the question, which is raised for the decision of the court, and upon which its judgment proceeds, is equally and exclusively a question of law;" and that "a prior judgment binds the parties, as an estoppel, *upon every question, which it in fact determines*, and precludes them from denying, in any subsequent action, either the facts or the law, upon which it proceeded."

The cases, which were cited in the court below, as modifying, or calling in question, the decisions, which have just been cited, do not tend to disturb the weight of their authority. None of them dispute the existence of the general principle, that a judgment, upon a point directly in issue, is conclusive between the same parties, so as to estop them from again contesting the same point, in another action, although the subject matter of the second suit may be different; and many of them in distinct terms avow this to be the law.

In some of these instances, however, it is decided, very properly, that a former judgment, based upon the insufficiency of the pleadings, is not conclusive. *Lampen* vs. *Kenning;* 1, *Mod.* 207. *Kendall* vs. *Talbot;* 1, *A. K. Marsh.* 237. *Cole* vs. *Driskell;* 1, *Blackford* 16. *Wright vs. Deklyne;* 1, *Peters Ct. Ct. R.* 199.

In others, of this class of cases, it is also properly decided, that a former judgment is not an estoppel, as to matters proved by way of aggravation, or otherwise collaterally, and not directly and necessarily, put in issue. *Gilbert* vs. *Thompson.* 9, *Cush.* 348. *Davis* vs. *Talcott;* 14, *Barb.* 611. *Miller* vs. *Maurice;* 6, *Hill (N. Y.)* 114. *Kirkpatrick* vs. *Stringely;* 2, *Carter, (Ia.)* 269. *King* vs. *Chase;* 15, *N. H.*, 9. *Hibsham* vs *Dullebau;* 4. *Watts* 183. *Bennett* vs. *Holmes;* 1 *Dev. and Batt.* 486.

In others again, of these cases, the decisions are based upon the peculiar facts of the particular suits under examination; and if the courts had erred, in any of these instances, in applying the law, the result would not have been to throw doubt upon the general principle. *Carter* vs. *Bloodgood;* 3, *Sandf. Chy.* 295. *Haight* vs. *Keokuk;* 4, *Clarke, (Iowa),* 199. *Hughes* vs. *Alexander;* 5, *Duer* 488. *W. A. & G. Steam Packet Co.* vs. *Sickles;* 24, *Howard* 333. *Guest* vs. *Warren;* 9, *Exchqr.* 378. *Campbell* vs. *Butts;* 3, *Comstock* 173. *Loomis* vs. *Green;* 7 *Greenlf.* 386.

And still others, of these cases are excellent authorities on behalf of the validity of the replications. *Martin* vs. *Kennedy;*

2, *Bos. & Puller* 71. *Bigelow* vs. *Winsor;* 1, *Gray* 299. *Merriam* vs. *Whittemore;* 5, *Gray* 316. *Walls* vs. *Lyon;* 2, *Gibbs (Mich.)*, 206. *Wood* vs. *Jackson;* 8, *Wendell* 9. *French* vs. *Neal;* 24. *Pickg.* 55. *Housemire* vs. *Moulton;* 15. *Indiana*, 367 *George* vs. *Gillespie* 1, *Greene, (Iowa)* 421. *Agnew* vs. *McElroy;* 10, *Sm. & Marsh*, 552. *Young* vs. *Black;* 7 *Cranch* 565. *Livermore* vs. *Herschell;* 3, *Pickg*, 33. *Pinney* vs. *Barnes;* 17, *Conn.* 420. *Arnold* vs. *Arnold;* 17, *Pickg*, 4. *Parkhurst* vs. *Sumner;* 23 *Vert.* 538.

The law, as clearly established, by the cases cited, and by the whole weight of authority, forbids a subsequent litigation, of the *same question*, whether of fact or of law, which has once been settled, by a judgment, in an action, between the same parties. It matters not, that the cause of action in the second suit may be different. It does not change the result, that, in the first action, the whole merits of the case were not fully presented. It is of no consequence, whether, in the first suit, the judgment was on demurrer, or based upon a verdict, or rendered by the court on an admitted state of facts. If *the point* was directly in issue, and the record shows that it must have been passed upon, the law, based upon the "sound and salutary principle" which requires that there should be some end to litigation, provides that it shall not again be contested, between the same parties. And this principle is decisive, as to the replications, which are now under consideration.

The action, in the present instance, in the court below, was based upon negotiable bonds, interest upon which was in arrear. The coupons attached to these bonds, were designed to take the place of receipts for annual interest. They were not independent contracts, but were merely incidental to the bonds: *Wright* vs. *O. & M. R. R. Co.; Disney, (Sup. Court of Cincinnati)*, 465. And the pleas, filed in the cause, were all aimed at the validity of the bonds themselves.

The former judgments, set up in the replications, were rendered in actions, between the same parties, for other instal-

ments of interest, due upon, and evidenced by, other coupons attached to, the same bonds; and in both cases the validity of the bonds themselves was the main question in issue.

In the suit determined, by the Dearborn Circuit Court, the petition distinctly alleged, that, by virtue of the law, approved February 14, 1848, the City subscribed for $50,000.00, of stock, in The Ohio & Mississippi Railroad Company, "*a company chartered to construct, and then constructing, a railroad to said city, a majority of the qualified voters of said city having first expressed their assent to such subscription, by expressing on their tickets, at an annual election in said city, that they were in favor of the subscription,*" and sold and issued the bonds to raise funds, for the payment of the stock; and that the plaintiffs, (the present Defendants in error), had purchased, and were the owners of the bonds, and the coupons attached to them. To this petition, after demurrers had been overruled, answers were filed by the city, averring, in the first, that the location of the road was not established through the city till after the subscription, and, in the second, that the railroad company was not chartered to construct, and was not at the date of the subscription constructing, a road to the city. To the first answer, a demurrer was filed and sustained. To the second answer, a reply was filed, in which it was set forth, that the railroad company had located its road through the city, before the delivery of the bonds. A demurrer to this reply was overruled. And then, "the said city not desiring to controvert the facts stated in said reply but admitting the same," judgment was rendered against her.

In the suit determined by the United States Circuit Court, the declaration was a special count on the bonds, alleging that they were "lawfully and in due form" issued by the city under the provisions of the Statute of Indiana; and this was demurred to among other reasons, because it was not made to appear, that "the bonds were issued, in pursuance of a vote taken, of the inhabitants of said city;" and the demurrer was overruled; and judgment rendered.

In both these cases, it will be perceived, not only that *the precise point directly put in issue*, was the *validity of the bonds*, but that in one case, the alleged *non-location of the road*, as affecting the authority to subscribe for the stock, and in the other, the asserted *absence of a vote of the people*, were especially pointed out, as the defenses relied upon by the city.

In the case now under examination two of the pleas attack the consideration of the bonds, three of them aver the non-location of the road, another one alleges the want of a vote of the citizens, and the other denies the delivery of the bonds; all of which points were distinctly and unequivocally disposed of in the former cases. It was essential in both the former litigations, to establish, that the city was legally authorized to issue the bonds, and really did execute and deliver them, for a valuable consideration; and these facts were conclusively established by the judgments.

If no especial attention had been called to these matters, they would nevertheless have been necessarily passed upon. But the act of the General Assembly of Indiana, under which the city acted, was, in both cases, particularly referred to, and the subscription to stock, as the consideration of the bonds, was set forth, as well as the execution and delivery of the bonds and coupons; and, as already stated, the specific defenses, most strongly urged, were based upon the alleged insufficiency of the consideration, and invalidity of the bonds, because, as was claimed, the railroad company was not one, to the stock of which the city was authorized to subscribe, and because such a subscription was not authorized by a vote of the people.

The adjudications relied upon as answers to these pleas, would have been conclusive, if the precise defenses, now set up, had not been made; for, as we have seen, it was only necessary that the question to be settled was in issue, and that the defenses *might have been made.* But it happens, in this instance, that every matter now pleaded to relieve the city from its liability, was directly brought to the attention of the courts, in the former litigations.

III. The rejoinder, to which a demurrer was sustained, will probably be claimed to be good, because of the allegation contained in it, that the Supreme Court of Indiana rendered a judgment, in another action between the same parties, that the City of Aurora had no power to issue the bonds, mentioned in the declaration, and that the Defendants in error were chargeable with notice. But the record of the action, of which profert was made and oyer craved, shows, that the only judgment rendered was, that the judgment of the court below be "*reversed*, at the costs of the appellees, and the *cause* remanded;" and that the only *point* decided was, that an instruction given to the jury by the Circuit Court of Dearborn County was "erroneous, and *may have* controlled the verdict in the cause." *Printed Record*, 198, 199. *Original Record*, 435, 436.

It would puzzle the counsel for the Plaintiff in error to find authorities supporting the sufficiency of this rejoinder. Nothing short of a *final judgment* will operate as an estoppel to a second litigation, of the same question, in the same form, between the same parties. A judgment of reversal "*affirms nothing but its own correctness. It simply nullifies the former judgment or decree, and declares that it shall henceforth be deemed void. It decides nothing upon the rights of the parties; but confines itself to the adjudication, that what has been done shall have no legal effect.*" *Harvey* vs. *Richards;* 2. *Gall.* 216, 231.

IV. The demurrer to the rejoinder does not open any question as to the sufficiency of the earlier pleadings. The rule that, on demurrer, judgment is to be rendered against the party who has committed the first fault, is not without limitations. It does not open for consideration any question, to which a previous demurrer has been overruled. *Rogers* vs. *Smiley;* 2 *Porter* (*Ala.*) 249.

And under no circumstances does it bring up for examination any errors that are not *substantial defects*. *Tubbs* vs. *Caswell;* 8, *Wendell* 129. *Stoddard* vs. *Onondago Annual Conf;* 12, *Barb.* 573. *Haynes* vs. *Covington;* 9. *Sm.* & *Marsh* 470.

If the rule were different, it would be unnecessary to seriously examine the objections made to the first count of the declaration. And the demurrers, to the second count, and to the replications, have already been considered.

V. If there was no error in the rulings of the Circuit Court upon the demurrers, there certainly was none in the rendition of the judgment. The cause, after the demurrers had been passed upon and a portion of the pleadings had been withdrawn, was submitted to the court "*for the assesment of damages.*" The Plaintiff in error, as has been noticed, was *in default*, for plea to the second count of the declaration. The execution of the bonds and coupons having been admitted, they were put in evidence without exception. And there was no exception whatever, taken at this stage of the proceedings, except the frivolous one, to the allowance of interest on the coupons.

VI. Upon the whole case, the judgment of the Circuit Court of the United States was undoubtedly correct.

The City of Aurora, January 1, 1852, issued her negotiable bonds for $50,000,00, payable twenty-five years after date, with interest annually, in the city of New York, in payment of a subscription to the same amount of the capital stock of The Ohio & Mississippi Railroad Company, reciting in each bond the purpose for which it was issued, and referring to the law under which the subscription was made. In advance of the subscription, the City Council of the City of Aurora, by its recorded proceedings, directing the Mayor to make it, decided, that there had been such a vote of the people as the law required. Before the certificates of stock were issued, or the bonds delivered, the railroad company had constructed its road, to and through the city. The Defendants in error became the holders and owners, for value, of all the bonds and coupons, prior to January 1, 1856. The interest, due on the day last mentioned, not having been paid, suit was commenced in the Dearborn County Indiana, Circuit Court, for the recovery of the amount of it; and answers were filed resisting the recovery, because, as alleg-

ed, the railroad company was not chartered to construct, and had not determined, at the date of the subscription, to construct, a road to the city; but final judgment was rendered, in favor of the Defendants in error, and against the City, for the amount claimed and interest, which remains in full force. Afterwards another action was commenced in the United States Circuit Court for the District of Indiana, for the recovery of the interest due January 1, 1857; and the declaration was demurred to, chiefly because of a claim, that no assent to the subscription by the qualified voters of the city was made to appear; but the demurrer was overruled, and judgment, as in the former suit, was rendered against the City; which also is unreversed. A judgment in a third case, for the interest due January 1, 1859, 1860, 1861, and 1862, was reversed by the Supreme Court of Indiana, because of error in the charge of the Circuit Court, and remanded for a new trial, in the latter court, where it is still pending. And then the action, the record of which is now before this court, was commenced, to recover the interest on the same bonds, due January 1, 1862, 1863, and 1864; and to pleas, denying the delivery of the bonds, and, attacking the consideration of them, generally, and because The Ohio & Mississippi Railroad Company was not chartered to construct, and had not, at the date of the subscription by the city to its stock, determined to construct, a railroad to the city, and because the subscription had not been authorized by a proper vote of the people, and because, after the subscription, but *before the delivery of the certificates of stock, or the issue of the bonds*, the stock had been depreciated in value, by the mismanagement of the board of directors of the company, of which one of the Defendants in error was a member, replications were filed, setting up, among other things, the former adjudications, between these same parties, by way of estoppel; and when demurrers to these replications had been overruled, no rejoinder to them was filed, except one, based upon the record of the reversal of a judgment in an action yet pending.

The fact, that the cause at the time of its submission to the Circuit Court, was in default for plea to the second count of the

declaration, and was submitted only for the assessment of damages, would be of itself conclusive. And the well settled rules of law, that a demurrer to a pleading is waived by pleading over, after it has been overruled,—and that a demurrer to a subsequent pleading does not bring up for consideration former pleadings, to which demurrers have been overruled,—and that in no event does a demurrer to a pleading bring in question any but substantial defects in prior pleadings,—would necessarily dispose of the errors assigned, as to the overruling of the demurrers to the declaration and to the replications, and leave for examination only the validity of the rejoinder; which is too clear for argument, But if the sufficiency of the replications were now to be discussed, the case would be none the more doubtful.

A Plaintiff cannot recover judgment, unless he is successful upon the issues made by all the pleas, which go to the whole case; and a Defendant must fail, for the same reason, if any one replication, responsive to all his pleas, is sustained. *Way* vs. *Simmons*, 8 *Blackford*, 559; *People* vs. *Society for Propagating the Gospel*, 2 *Paine's Ct. Ct. Rep.*, 545.

If it has been made to appear, therefore in the present case, that any of the replications, responsive to all the pleas are good, the judgment of the Circuit Court was undeniably correct. And leaving out of view all the others, there are replications, to all the pleas, setting up, by way of estoppel, former adjudications, between the same parties, in which every question, raised by the pleas, as to the validity of the same bonds, for the recovery of interest upon which, the present suit and both the former actions were founded, was definitely settled by final judgments, yet remaining in full force.

THOS. G. MITCHELL,
Counsel for Defendants in Error.

Supreme Court of the United States.

CHARLES W. WEST, *et al.*,	*In error to the U. S.*
ads.	*Circuit Court for the*
THE CITY OF AURORA	*District of Indiana.*

Points in Reply to Plaintiff in Error.

THOMAS G. MITCHELL,

Counsel for Defendants in Error.

SUPREME COURT OF THE UNITED STATES.

CHARLES W. WEST, *et. al.* *ads.*
THE CITY OF AURORA.

In error to the U. S. Circuit Court for the District of Indiana.

Points in Reply to Plaintiff in Error.

My brief in this case was necessarily printed, before I had an opportunity of seeing the argument, on behalf of the Plaintiff in error; which I have only just received. And I deem it proper, to state a few propositions, by way of reply.

I. The case comes before the Court, *on the record.* And neither the matters, alleged in the pleas, which are not admitted by replications of estoppel, nor those referred to in the record of the case, made the foundation of the rejoinder, are to be taken as facts.

It is not proper, therefore, for counsel to urge, or for the Court to consider, any question, as to the location of the O. & M. Railroad,—as to the vote of the citizens of Aurora, in favor of the subscription to stock,—as to the refusal of the city to issue its bonds, till an arrangement had been made with Cobb and others,—as to the manner, in which the bonds came into the possession of the Railroad Company,—as to the delay of that Company to issue the certificates of stock,—as to the elopement of the former Mayor of

the city,—as to the design to have the railroad company managed in New York,—as to an endorsement upon the stock certificates, calculated to render them valueless,—as to the destruction of the prosperity of the city, by making it a way station,—as to the existence of a reason "for any anxiety for West and Torrence,"—as to the city being "the party likely to suffer,"—as to whether the Defendants in error were "complicated with the injury and loss which befell the railroad company,"—or as to any of the numerous other similar matters, which are profusely scattered up and down the argument of the counsel for the Plaintiff in error.

II. It is not true that the judgment could not have been rendered upon the second count of the declaration.

That count is in the ordinary form of the common counts in assumpsit. The only plea, filed in response to it, was withdrawn, leaving the Defendant below in default. And there was no exception taken to the bonds and coupons, offered and read in evidence; the execution of which, by the officers of the city, was admitted.

If the demurrer to that count had been improperly overruled, the error, as already stated, would have been waived, by pleading over; and the withdrawal of the plea would not have affected the question. But under the decisions of this court, the count was good, and the evidence would have been properly received under it, even if it had been objected to; because "bonds and coupons like these, by universal commercial usage and consent, have all the qualities of commercial paper." *Gelpcke* vs. *City of Dubuque;* 1 *Wallace*, 175, 206, 221; *Thompson* vs. *Lee County;* 3 *Wallace*, 327, 332.

III. The interest upon the coupons was properly allowed.

The case is similar to the ordinary one, of notes, given for annual interest upon a loan; on which no one ever doubted, that interest accrued after maturity. Whatever may be the law in some states, as to interest, provided in the note for the principal, to be paid *annually*, there is no room for doubt, in actions, founded upon independent notes for interest. And this principle has been directly applied, by this Court, to coupons upon bonds. *Gelpcke* vs. *City of Dubuque*; *ubi supra*.

IV. There is a conflict of authority among the State Courts, as to the powers of the officers of municipal corporations.

In a very late case, it was held by the Supreme Court of Tennessee, that, admitting the power, under which the Mayor and Aldermen of the City of Memphis had acted, to be doubtful, it did not "lie in the mouth of the city authorities to repudiate their own acts." *Adams* vs. *Memphis and Little Rock R. R. Co.*; 2, *Caldwell* 645, 660.

V. The additional authorities, cited in reference to the doctrine of estoppel by former adjudications, do not even tend to shake the doctrine, for which I have contended.

As an instance, I may refer to the case of *Perkins* vs. *Moore*; 16, *Ala* 17. The syllabus of that case is: "A judgment on general demurrer to the declaration is a judgment on the merits, and is conclusive in a subsequent suit on the same cause of action." And upon this point the Court was unanimous. The counsel for the plaintiff in error, however, cites a *dissenting opinion*, on page 19, as to "the identity of the two causes of action, or rather of the two declarations."

VI. All the points, now controverted, were definitely de-

cided by the former adjudications; both of which are pleaded, as estopples, *to all the pleas.*

In neither case, could there have been judgment for the Plaintiffs, until it was determined, that the bonds were *delivered*, as well as signed and sealed, by the city; and that there was a valid consideration; and that they were evidences of valid claims, on behalf of the Plaintiffs, as the holders of them.

And one good replication, to all the pleas, is enough.

VII. If considerations of policy were to control the decision, the judgment of the Circuit Court should be affirmed.

Under a law, which required all purchasers of city bonds, to examine minutely every step taken by the municipal authorities, in reference to their issue, there would be no market for such securities, except in large amounts and at ruinous discounts.

It is better that tax-payers should occasionally suffer, from the unfaithfulness of officers, elected by themselves, than that all public credit should be destroyed.

THOS. G. MITCHELL,
Counsel for Defendants in Error.

Cincinnati, February 10, 1868.